S. HRG. 98-650

1983 OMNIBUS TERRITORIES

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND SUPPLY

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1366

A BILL TO IMPLEMENT THE RECOMMENDATIONS OF THE INTERIM REPORT OF THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS AND TO AMEND THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS AND THE ORGANIC ACT OF GUAM, AND FOR OTHER PURPOSES

S. 1367

A BILL TO REPEAL CERTAIN PROVISIONS OF LAW RELATING TO THE TERRITORIES AND INSULAR POSSESSIONS OF THE UNITED STATES

OCTOBER 6, 1983

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
30-860 O WASHINGTON : 1984

S311-18

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JAMES A. McCLURE, Idaho, *Chairman*

MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, Jr., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
JOHN W. WARNER, Virginia
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
DANIEL J. EVANS, Washington

J. BENNETT JOHNSTON, Louisiana
DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
SPARK M. MATSUNAGA, Hawaii
JOHN MELCHER, Montana
PAUL E. TSONGAS, Massachusetts
BILL BRADLEY, New Jersey

MICHAEL D. HATHAWAY, *Staff Director*
CHARLES A. TRABANDT, *Chief Counsel*
D. MICHAEL HARVEY, *Chief Counsel for the Minority*

SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

LOWELL P. WEICKER, Jr., Connecticut, *Chairman*

MARK O. HATFIELD, Oregon
JOHN H. CHAFEE, Rhode Island
JOHN W. WARNER, Virginia
JOHN HEINZ, Pennsylvania

SPARK M. MATSUNAGA, Hawaii
HOWARD M. METZENBAUM, Ohio
PAUL E. TSONGAS, Massachusetts
BILL BRADLEY, New Jersey

JAMES A. McCLURE and J. BENNETT JOHNSTON are Ex Officio Members of the Subcommittee

JAMES P. BEIRNE, *Counsel*

CONTENTS

Page

S. 1366 ... 3
S. 1367 ... 41
S. 589 (as passed the House) ... 46

STATEMENTS

Abbate, Hon. Paul. J., presiding judge, Superior Court of Guam ... 160
Akaka, Hon. Daniel K., a U.S. Representative from the State of Hawaii ... 157
Corrada, Hon. Baltasar, Delegate from Puerto Rico ... 50
Cruz, J. F., director, Washington Liaison Office, Office of the Governor of Guam ... 163
de Lugo, Hon. Ron, Delegate from the Virgin Islands, accompanied by Lloyd Williams, member of the legislature of the Virgin Islands ... 193
Guerrero, Herman, executive assistant to the Washington Representative, Northern Marianas Washington Office ... 329
Joseph, James A., chairman, Northern Mariana Islands Commission on Federal Laws ... 222
Kennedy, Hon. Anthony M., U.S. Circuit Judge for the Ninth Circuit ... 367
Luis, Hon. Juan, Governor, U.S. Virgin Islands, as presented by Julio Brady, Lieutenant Governor, Territory of the Virgin Islands ... 199
MacMeeking, Daniel H., executive director, Northern Mariana Islands Commission on Federal Laws ... 308
Mapp, Kenneth E., Senator, Legislature of the Vigin Islands ... 212
Matsunaga, Hon. Spark M., a U.S. Senator from the State of Hawaii ... 149
Montoya, Richard T., Acting Assistant Secretary for Territorial and International Affairs, Department of the Interior ... 76
Pangelinan, Edward Dlg., Representative to the United States from the Commonwealth of the Northern Mariana Islands ... 335
Perez, Joaquin, general manager, Guam Power Authority ... 183
Sablan, Herman D., administrator, Guam Environmental Protection Agency ... 189
Shanks, Robert B., Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, accompanied by Herman Marcuse, Attorney-Adviser, Office of Legal Counsel, Department of Justice ... 88
Sunia, Hon. Fofo I. F., Delegate from American Samoa ... 54
Weicker, Hon. Lowell P., Jr., a U.S. Senator from the State of Connecticut ... 1
Williams, Lloyd, member of the legislature of the Virgin Islands ... 219
Won Pat, Hon. Antonio Borja, Delegate from Guam ... 59

APPENDIX

Additional material submitted for the record ... 379

1983 OMNIBUS TERRITORIES

THURSDAY, OCTOBER 6, 1983

U.S. SENATE,
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-366, Dirksen Office Building, Hon. Lowell P. Weicker, Jr., presiding.

Present: Senators Weicker, McClure, and Matsunaga.

Also present: James P. Beirne, counsel; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. The hearing will come to order. The hearing has been scheduled to receive testimony on S. 1366 and S. 1367 and the House amendments to S. 589.

S. 1366 would implement the recommendations of the interim report of the Northern Mariana Commission on Federal Laws and would amend the revised Organic Acts of the Virgin Islands and Guam.

S. 1367 would repeal certain provisions of Federal law relating to the territories. House-passed amendments to S. 598, the Guam sewer construction authorization, cover a wide variety of issues, several of which have not been the subject of Senate hearings.

We have a full agenda and a number of witnesses who have come to Washington to testify. In order to provide a complete hearing record and to insure an ample opportunity for questions I will ask all the witnesses to submit their formal testimony for the record. The statement together with any supporting material will appear in full in the record which will remain open for 2 weeks for any additional comments.

Communications I have received from the territorial governments and the administration indicate that much of this legislation is noncontroversial, so in order to expedite the hearing I would appreciate it if witnesses would simply indicate which legislative items they support and then focus their testimony on those areas which they oppose or which they feel should be modified.

I would also like to ask all witnesses to remain until the hearing is over so that they can be recalled if subsequent testimony raises questions. I make that request especially of the administration since I understand there are some significant differences of opinion on the judicial reform provisions of S. 1366 and there may be some specific questions on the House-passed Clean Air Act amendments to S. 589.

[The texts of the bills follow:]

II

98TH CONGRESS
1ST SESSION

S. 1366

To implement the recommendations of the Interim Report of the Northern Mariana Islands Commission on Federal Laws and to amend the Revised Organic Act of the Virgin Islands and the Organic Act of Guam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 1983

Mr. WEICKER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To implement the recommendations of the Interim Report of the Northern Mariana Islands Commission on Federal Laws and to amend the Revised Organic Act of the Virgin Islands and the Organic Act of Guam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

PROVISIONS OF LAW

SEC. 101. Provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall not bar the United States of America from paying compensation to or employing citizens of the Northern Mariana Islands.

STATUTES RELATING TO THE UNIFORMED SERVICES

SEC. 102. In accordance with the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241), a citizen of the Northern Mariana Islands who declares in writing an intent to become a citizen, and not a national, of the United States of America upon full implementation of such Covenant shall be deemed a citizen of the United States of America for purposes of—

(a) sections 311, 510, 532, 591, 2004, 2031, 2104, 2107, 2122, 4348, 6019, 6911, 6958, 6959, 8257, and 9348 of title 10, United States Code;

(b) sections 195, 371, 706, and 823 of title 14, United States Code; and

(c) section 313 of title 32, United States Code.

STATUTES RELATING TO THE FEDERAL EMPLOYMENT

SEC. 103. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 5342, 5343, 5561, 5595, 5912, 5922, 6301, 7103, 7532, 8171, 8501, 8701, and 8901 of title 5, United States Code;

(b) section 22 of title 13, United States Code;

(c) section 2 of Public Law 86-91 (73 Stat. 213; 20 U.S.C. 901);

(d) sections 301-03 of the Act of January 27, 1943 (ch. 36, 62 Stat. 6), as amended (22 U.S.C. 1451-53);

(e) section 636 of Public Law 87-195 (75 Stat. 424), as amended (22 U.S.C. 2396);

(f) sections 5 and 6 of Public Law 87-293, 75 Stat. 612, as amended (22 U.S.C. 2504-05);

(g) sections 103, 301, 312, 403, 409, 504, 608, 901, 903, 904, and 1101 of Public Law 96-465 (94 Stat. 2071; 22 U.S.C. 3903, 3941, 3952, 3963, 3969, 3984, 4008, 4081, 4083, 4084, and 4131);

(h) section 15 of Public Law 90-202 (81 Stat. 602), as added by section 28(b)(2) of Public Law 93-259 (88 Stat. 55), as amended (29 U.S.C. 633a);

(i) sections 235 and 4105 of title 38, United States Code;

(j) section 203 of the Act of July 1, 1944 (ch. 373, 53 Stat. 682), as amended (42 U.S.C. 204);

(k) section 104 of Public Law 93-113 (87 Stat. 394; 42 U.S.C. 4954); and

(l) Civil Service Rules VII and VIII (5 C.F.R. parts 7 and 8).

STATUTES RELATING TO PROTECTION AND SERVICES

SEC. 104. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 351 and 1486 of title 10, United States Code;

(b) section 498 of the Act of June 17, 1930 (ch. 497, 46 Stat. 590), as amended (19 U.S.C. 1498);

(c) subsection (b) of section 502 of Public Law 93-618 (88 Stat. 1978; 19 U.S.C. 2462(b));

(d) section 2001 of the Revised Statutes of 1878 (22 U.S.C. 1732);

(e) section 108 of Public Law 95-105 (91 Stat. 845; 22 U.S.C. 2151n-1);

(f) sections 601 and 620 of Public Law 87-195 (75 Stat. 424), as amended (22 U.S.C. 2351 and 2370);

(g) section 3 of the Act of August 1, 1956 (ch. 841, 70 Stat. 890; 22 U.S.C. 2670);

(h) section 7 of Public Law 96-8 (93 Stat. 14; 22 U.S.C. 3306);

(i) sections 1707, 1709, 1711, 1734, and 1737 of the Revised Statutes of 1878, as amended (22 U.S.C. 4193, 4195, 4197, 4217, and 4218);

(j) section 1 of the Act of December 23, 1944 (ch. 716, 58 Stat. 921), as amended (31 U.S.C. 492a);

(k) sections 3048 and 3689 of the Revised Statutes of 1878, as amended (31 U.S.C. 711);

(l) sections 4294 and 4295 of the Revised Statutes of 2878 (33 U.S.C. 382 and 383);

(m) section 1113 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by section 302 of Public Law 87-64 (75 Stat. 131), and as amended (42 U.S.C. 1313);

(n) section 521 of Public Law 94-163, 89 Stat. 871 (42 U.S.C. 6391); and

(o) sections 2, 8, 10, and 12 of the Act of October 6, 1917 (ch. 106, 40 Stat. 411), as amended (50 U.S.C. App. 2, 8, 10, and 12).

STATUTES RELATING TO COMMERCE

SEC. 105. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 302, 310D, 311, and 321 of Public Law 87-128, 75 Stat. 294, as amended (7 U.S.C. 1922, 1934, 1941, and 1961);

(b) section 5146 of the Revised Statutes of 1878, as amended (12 U.S.C. 72);

(c) subsection (a) of section 25 of the Act of December 23, 1913 (ch. 6, 38 Stat. 251), as added by the Act of December 24, 1919 (ch. 18, 41 Stat. 378), and as amended (12 U.S.C. 619);

(d) subsection (a) of section 7 of the Act of July 22, 1932 (ch. 522, 47 Stat. 725), as amended (12 U.S.C. 1427(a));

(e) subsection (b) of section 5.1 of Public Law 92-181 (85 Stat. 583; 12 U.S.C. 2222);

(f) subsection (i) of section 44 of the Act of July 5, 1946 (ch. 540, 60 Stat. 427), as amended (15 U.S.C. 1126(i));

(g) subsection (b)(7) of section 4 of the Act of August 8, 1956 (ch. 1036, 70 Stat. 1119), as amended (16 U.S.C. 742c(b)(7));

(h) subsection (e) of section 4 of the Act of June 10, 1920 (ch. 285, 41 Stat. 1063), as amended (16 U.S.C. 797(e));

(i) subsection (b) of section 101 of Public Law 94-553 (90 Stat. 2541; 17 U.S.C. 104(b));

(j) subsection (a) of section 526 of the Act of June 17, 1930 (ch. 497, 46 Stat. 590), as amended (19 U.S.C. 1526(a));

(k) subsection (a)(5) of section 2 of the Act of June 20, 1936 (ch. 638, 49 Stat. 1559), as amended (20 U.S.C. 107a(a)(5));

(l) section 238 of Public Law 87–195 (75 Stat. 424), as added by section 105 of Public Law 91–175 (83 Stat. 805), and as amended (22 U.S.C. 2198);

(m) section 897 of the Internal Revenue Code of 1954, as added by subsection (a) of section 1122 of Public Law 96–499 (94 Stat. 2599; 26 U.S.C. 897);

(n) subsection (b)(7) of section 622 of Public Law 96–294 (94 Stat. 611; 30 U.S.C. 1522(b)(7));

(o) subsection (5) of section 3 of Public Law 93–627 (88 Stat. 2126; 33 U.S.C. 1502(5));

(p) subsection (f)(3) of section 514 of the Act of July 15, 1949 (ch. 338, 63 Stat. 413), as added by subsection (a) of section 804 of Public Law 87–70 (75 Stat. 149), and as amended (42 U.S.C. 1484(f)(3));

(q) subsection (d) of section 103 and subsection (d) of section 104 of the Act of August 1, 1946 (ch. 724, 60 Stat. 754), as added by section 1 of the Act of August 30, 1954 (ch. 1073, 68 Stat. 921), and as amended (42 U.S.C. 2133(d) and 2134(d));

(r) subsection (b)(2)(A) of section 7 of Public Law 93–577 (88 Stat. 1878; 42 U.S.C. 5906(b)(2)(A));

(s) subsection (p)(1) of section 19 of Public Law 93-577 (88 Stat. 1878), as added by subsection (b) of section 207 of Public Law 95-238 (92 Stat. 53; 42 U.S.C. 5919(p)(1));

(t) subsection (b) of section 179 of Public Law 96-294 (94 Stat. 611; 42 U.S.C. 8779(b)(4));

(u) subsection (a)(3) of section 2, subsection (a) of section 101, and subsection (e)(2)(C) of section 108 of Public Law 96-320, 94 Stat. 974 (42 U.S.C. 9101(a)(3); 9111(a); and 9118(e)(2)(C));

(v) section 4219 of the Revised Statutes of 1878, as amended (46 U.S.C. 121);

(w) section 4131 of the Revised Statutes of 1878, as amended (46 U.S.C. 221);

(x) section 1 of the Act of August 1, 1939 (ch. 409, 53 Stat. 1145), as amended (46 U.S.C. 242);

(y) section 4377 of the Revised Statutes of 1878, as amended (46 U.S.C. 325);

(z) section 5 of the Act of June 25, 1936 (ch. 816, 49 Stat. 1930; 46 U.S.C. 672a);

(aa) section 36 of the Act of September 7, 1916 (ch. 451, 39 Stat. 728; 46 U.S.C. 834);

(bb) sections 302, 501, 509, 601, 809(a), 1103, and 1104 of the Act of June 29, 1936 (ch. 858, 49

Stat. 1985), as amended (46 U.S.C. 1132, 1151, 1159, 1171, 1213, 1273, and 1274);

(cc) subsection (a) of section 203 of Public Law 96-320 (94 Stat. 974; 46 U.S.C. 1279c(a));

(dd) sections 1201 and 1203 of the Act of June 29, 1936 (ch. 858, 49 Stat. 1985), as added by the Act of September 7, 1950 (ch. 906, 64 Stat. 773), and as amended (46 U.S.C. 1281 and 1283);

(ee) sections 1301, 1303, 1304, and 1306 of Public Law 96-453 (94 Stat. 1997; 46 U.S.C. 1295, 1295b, 1295c, and 1295e);

(ff) subsection (l)(1) of section 303 and subsection (b) of section 310 of the Act of June 19, 1934 (ch. 652, 48 Stat. 1064), as amended (47 U.S.C. 303(l)(1) and 310(b));

(gg) subsection (16) of section 101, section 104, and subsection (d)(4) of section 401 of Public Law 85-726 (72 Stat. 731), as amended (49 U.S.C. 1301(16), 1304, and 1371(d)(4));

(hh) section 418 of Public Law 85-726 (72 Stat. 731), as added by subsection (a) of section 17 of Public Law 95-163 (91 Stat. 1278), and as amended (49 U.S.C. 1388); and

(ii) sections 501, 602, and 1303 of Public Law 85-726 (72 Stat. 731), as amended (49 U.S.C. 1401, 1422, and 1533).

STATUTES RELATING TO POLITICAL AND CIVIL RIGHTS

SEC. 106. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) section 319 of Public Law 92-225 (86 Stat. 3), as added by subsection (2) of section 112 of Public Law 94-283 (90 Stat. 475), and as redesignated by subsection (5) of section 105 of Public Law 96-187 (93 Stat. 1339; 2 U.S.C. 441e);

(b) subsection (a)(2) of section 3 of Public Law 93-579 (88 Stat. 1896), as amended (5 U.S.C. 552a(a)(2));

(c) sections 241 and 243, subsection (b)(5) of section 245, subsection (a) of section 4000, and subsection (b) of section 4100 of title 18, United States Code;

(d) sections 4081 and 4082 of the Revised Statutes of 1878, as amended (22 U.S.C. 257 and 258);

(e) subsection (b)(2) of section 1 of Act of June 8, 1938 (ch. 327, 52 Stat. 631), as amended (22 U.S.C. 611);

(f) sections 1343, 1344, 1391, 1443, 1861, 1862, 1863, and 1865 of title 28, United States Code;

(g) section 505 of the Act of June 30, 1948 (ch. 758, 62 Stat. 1115), as added by section 2 of Public Law 92-500 (86 Stat. 816; 33 U.S.C. 1365);

(h) subsection (a)(1) of section 2004 of the Revised Statutes of 1878, as amended (42 U.S.C. 1971(a)(1));

(i) section 2, subsection (b) of section 3, section 4, and subsection (a) of section 10 of Public Law 89-110 (79 Stat. 437; 42 U.S.C. 1973, 1973a(b), 1973b, and 1973h(a));

(j) subsection (a) of section 201 of Public Law 89-110 (79 Stat. 437), as added by section 6 of Public Law 91-285 (84 Stat. 314), as amended (42 U.S.C. 1973aa(a));

(k) section 203 of Public Law 89-110 (79 Stat. 437), as added by section 301 of Public Law 94-73 (89 Stat. 400; 42 U.S.C. 1973aa-1a);

(l) section 104 of Public Law 85-315 (71 Stat. 634), as amended (42 U.S.C. 1975c);

(m) section 1979 of the Revised Statutes of 1878, as amended (42 U.S.C. 1983);

(n) section 1980 of the Revised Statutes of 1878 (42 U.S.C. 1985);

(o) section 702 of Public Law 88-352 (78 Stat. 241), as amended (42 U.S.C. 2000e-1);

(p) section 717 of Public Law 88-352 (78 Stat. 241), as added by section 11 of Public Law 92-261 (86 Stat. 103; 42 U.S.C. 2000e-16);

(q) section 2 of the Act of March 2, 1917 (ch. 145, 39 Stat. 951), as amended (48 U.S.C. 737);

(r) subsection (i) of section 101 of Public Law 95-511 (92 Stat. 1783; 50 U.S.C. 1801);

(s) subsection (b)(3) of section 10 of the Act of June 24, 1948 (ch. 625, 62 Stat. 604), as amended (50 U.S.C. App. 460(b)(3));

(t) section 105 of the Act of October 17, 1940 (ch. 888, 54 Stat. 1178), as added by section 4 of the Act of October 6, 1942 (ch. 581, 56 Stat. 769; 50 U.S.C. App. 514); and

(u) section 512 of the Act of October 17, 1940 (ch. 888, 54 Stat. 1178); as amended (50 U.S.C. App. 572).

STATUTES RELATING TO FEDERAL PROGRAMS AND BENEFITS

SEC. 107. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) subsection (f) of section 6 of Public Law 88-525 (78 Stat. 703), as amended (7 U.S.C. 2015(f));

(b) subsection (a) of section 2545 of title 10, United States Code;

(c) subsection (m)(2) of section 2[3] of the Act of September 21, 1950 (ch. 967, 64 Stat. 873), as added by section 6(c)(4) of Public Law 95–369 (92 Stat. 607; 12 U.S.C. 1813(m)(2));

(d) subsection (b) of section 500 of title 14, United States Code;

(e) paragraphs (4) and (5) of subsection (a) of section 4 of Public Law 88–578 (78 Stat. 897), as added by section 2 of Public Law 92–347 (86 Stat. 459), as amended, and by subsection (2) of section 9 of Public Law 96–344 (94 Stat. 1133; 16 U.S.C. 460l–6a(a) (4) and (5));

(f) section 29 of the Act of August 1, 1956 (ch. 841, 70 Stat. 890), as added by section 2201 of Public Law 96–465 (94 Stat. 2071; 22 U.S.C. 2701);

(g) section 2 of Public Law 95–524 (92 Stat. 1909; 29 U.S.C. 834(e) and 993(b)(1)(C));

(h) subsection (g) of section 9 of the Act of March 4, 1927 (ch. 509, 44 Stat. 1424), as amended (33 U.S.C. 909(g));

(i) subsection (b) of section 624 of title 38, United States Code;

(j) subsection (d)(12) of section 789, formerly section 776, of the Act of July 1, 1944 (ch. 373, 58 Stat. 682), as added by subsection (a) of section 3 of Public Law 93-154 (87 Stat. 594), as amended (42 U.S.C. 295g-8(d)(12));

(k) subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as amended (42 U.S.C. 302(b)(3) and 304);

(l) subsection (t) of section 202 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 118 of the Act of August 1, 1956 (ch. 836, 70 Stat. 807), and as amended (42 U.S.C. 402(t));

(m) subsection (a)(4) of section 103 of Public Law 89-97 (79 Stat. 285), as amended (42 U.S.C. 426a(a)(4));

(n) subsection (a)(3) of section 228 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 302 of Public Law 89-368 (80 Stat. 38), as amended (42 U.S.C. 428(a)(3));

(o) subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as amended (42 U.S.C. 1202(b)(2) and 1204);

(p) subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935 (ch. 531, 49 Stat.

620), as added by section 351 of the Act of August 29, 1950 (ch. 809, 64 Stat. 477; 42 U.S.C. 1352(b)(2) and 1354);

(q) subsection (a)(1)(B) of section 1614 and subsection (a)(3) of section 1818 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by sections 301 and 202, respectively, of Public Law 92–603 (86 Stat. 1329), and as amended (42 U.S.C. 1382c(a)(1)(B) and 1395i–2(a)(3));

(r) subsection (2) of section 1836 and subsection (b)(4) of section 1902 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 102 and subsection (b) of section 121, respectively, of Public Law 89–97 (79 Stat. 285; 42 U.S.C. 1395o(2) and 1396a(b)(4));

(s) subsection (b) of section 2 of the Act of August 16, 1941 (ch. 357, 55 Stat. 622; 42 U.S.C. 1652(b));

(t) subsection (c) of section 101 of the Act of December 2, 1942 (ch. 668, 56 Stat. 1028), as amended (42 U.S.C. 1701(c));

(u) section 10 of the Act of May 10, 1950 (ch. 171, 64 Stat. 149), as amended (42 U.S.C. 1869);

(v) subsection (c) of section 2 of Public Law 86–209 (73 Stat. 431; 42 U.S.C. 1881(c)); and

(w) section 2 of the Act of August 3, 1950 (ch. 520, 64 Stat. 397; 42 U.S.C. 1922).

GEOGRAPHIC APPLICABILITY OF LAWS UNAFFECTED

SEC. 108. Nothing in title I, sections 1 to 11 of this Act shall extend to the Northern Mariana Islands any law not otherwise geographically applicable to or within the Northern Mariana Islands.

STATUTORY CONSTRUCTION

SEC. 109. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States for purposes of any provision requiring United States citizenship as a prerequisite to receipt of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94–241).

DEFINITION

SEC. 110. For purposes of this title, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

EXPIRATION

SEC. 111. Title I of this Act and the rights and privileges extended pursuant to such sections shall expire upon establishment of the Commonwealth of the Northern Mariana Islands.

TITLE II

VIRGIN ISLANDS

SEC. 201. In section 3 of the Revised Organic Act of the Virgin Islands, as amended (68 Stat. 4981; 48 U.S.C. 1561), the proviso in the next to the last paragraph is amended to read as follows: "*Provided*, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22 (a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.".

SEC. 202. Section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"SEC. 21. (a) The judicial power of the Virgin Islands shall be vested in a court of record designated the 'District

Court of the Virgin Islands' established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22 (a) and (c) of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

SEC. 203. (a) Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1612) is amended to read as follows:

"SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the laws relating to the income tax enacted by the legislature of the Virgin Islands.

"(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not vested by local law in the local courts of the Virgin Islands: *Provided,* That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

"(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this subsection.".

(b) The provisions of this section shall not result in the loss of jurisdiction of the District Court of the Virgin Islands over any complaint or proceeding pending in it on the day preceding the effective date of this amendatory Act and such complaint and proceeding may be pursued to final determination in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and the Supreme Court, notwithstanding the provisions of this amendatory Act.

SEC. 204. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1613) is amended to read as follows:

"SEC. 23. The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the highest court of the Virgin Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, including this Act, or any authority exercised thereunder: *Provided further*, That the Court of Appeals for the Third Circuit shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of the Virgin Islands or the orders or regulations issued or actions taken by the executive branch of the government of the Virgin Islands unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.".

SEC. 205. The Revised Organic Act of the Virgin Islands is amended by adding to it a new section 23A:

"SEC. 23A. (a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the judgments and orders of the courts established by local law may be reviewed in the appellate division of the district court to the extent now or hereafter prescribed by the legislature: *Provided,* That the legislature may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) The appellate division of the district court shall consist of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court pursuant to section 24(a) of this Act: *Provided,* That only one of them shall be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided,* That the Court of Appeals for the Third Circuit shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of the Virgin Islands or the orders or regulations issued or actions taken by the executive branch of the government of the Virgin Islands unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) The provisions of subsection (c) limiting the appellate review of the court of appeals to decisions involving Federal questions shall not apply to any appeal or other method of review from the decisions of any court established by local law pending on the effective date of this Act in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, or the Supreme Court of the United States.

"(e) Upon the establishment of the appellate court provided for in section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.".

SEC. 206. (a) Section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended to read as follows:

"(a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.".

(b) Section 24(b) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(b)) is amended to read as follows:

"(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: *Provided,* That in the district court all criminal prosecutions under the laws of the United States and all criminal prosecutions under local law under section 22(c) of this Act may be had by indictment by grand jury or by information: *Provided further,* That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.".

SEC. 207. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1615) is amended to read as follows:

"SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie.".

SEC. 208. Section 27 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1617) is amended by substituting the words "courts established by local law" for "inferior courts of the Virgin Islands" wherever they appear, and by deleting the last two sentences.

GUAM

SEC. 209. Section 22 of the Organic Act of Guam (64 Stat. 389; 48 U.S.C. 1424), as amended, is amended to read as follows:

"SEC. 22. (a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 22A of this Act.

[illegible]

"(b) The District Court of Guam shall have the jurisdiction of a district court of the United States and, effective April 1, 1984, that of a bankruptcy court of the United States.

"(c) In addition to the jurisdiction described in subsection (b), the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been vested by the legislature in another court or other courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

"(d) The District Court of Guam shall have the appellate jurisdiction provided for in section 22C of this Act.

"Sec. 22A. (a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after January 1, 1983, the legislature of Guam may in its discretion establish an appellate court.

"(b) The legislature may vest in the local courts jurisdiction over all causes in Guam. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 22(b) of this Act.

"(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.

"SEC. 22B. The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the highest court of Guam from which a decision could be had in all cases involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided further*, That the court of appeals shall not have jurisdiction of appeals in any cause of involving only the laws enacted by the legislature of Guam or the orders or regulations issued or actions taken by the executive branch of the government of Guam unless the appeal involves the consistency of such laws, orders, regulations, or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"SEC. 22C. (a) Prior to the establishment of the appellate court authorized by section 22A(a) of this Act the judgments and orders of the local courts of Guam may be reviewed in the Appellate Division of the District Court to the extent now or hereafter prescribed by local law: *Provided*, That local law may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) The Appellate Division of the District Court shall consist of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside there unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24 of this Act: *Provided,* That only one of them shall be a judge of a local court of Guam. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided,* That the court of appeals shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of Guam or the orders or regulations issued or actions taken by the executive branch of the government of Guam unless the appeal involves the consistency of such laws, orders, regulations, or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection. The provisions of this subsection, limiting the appellate review of the court of appeals to decisions involving Federal questions, shall not apply to any appeal or other method of review from the decisions of the local courts of Guam pending on the effective date of this Act in the District Court of Guam, the United States Court of Appeals for the Ninth Circuit, or the Supreme Court of the United States.

"(d) Upon the establishment of the appellate court provided for in section 22A(a) of this Act all appeals from the decisions of the local courts not previously taken must be taken to the appellate court. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

"Sec. 22D. Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provision in Rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the District Court of Guam and appeals therefrom; except that the terms 'attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the attorney general of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.".

SEC. 210. Section 24 of the Organic Act of Guam, as amended (64 Stat. 390; 48 U.S.C. 1424b), is amended, by:

(a) by substituting in the first paragraph of subsection (a) the words "for the term of ten years" for "for a term of eight years";

(b) substituting in the second paragraph of subsection (a) the words "a local court of record" for "the Island Court of Guam";

(c) substituting in subsection (b) the numbers "35" and "37" for "31" and "33", respectively; and

(d) deleting subsection (c).

SEC. 211. Section 1 of the Act of August 27, 1954 (68 Stat. 882), is amended by repealing that portion which reads: "that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further".

NORTHERN MARIANA ISLANDS

SEC. 212. Section 1(b)(1) of the Act of November 8, 1977 (91 Stat. 1265; 48 U.S.C. 1694(b)(1)), is amended by substituting the words "for the term of ten years" for "for the term of eight years".

SEC. 213. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694a(a)), is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States, except that the jurisdiction of the district court with respect to the government of the Trust Territory of the Pacific Islands or its agencies or instrumentalities shall be limited (a) to actions brought by that government or its agencies or instrumentalities, (b) to actions brought against that government or its agencies or instrumentalities based upon a commercial activity carried on by that government or its agencies or instrumentalities within the Northern Mariana Islands, and (c) to actions in which money damages are sought against that government or its agencies or instrumentalities for personal injury or death, or damage to or loss of property, occurring in the Northern Mariana Islands and caused by the tortious act or omission of that government or its agencies or instrumentalities, or of any official or employee thereof while acting within the scope of his office or employment, except any claim based upon the exercise or failure to exercise a discretionary function, regardless of whether the discretion be abused, or any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. In any suit by or against the government of the trust territory or its agencies or instrumentalities permissible under this section, that government or its agencies or instrumentalities shall be entitled to such rights and privileges as are applicable to the United States when it is a party. The district court shall have no jurisdiction over actions brought against the officers or employees of that government or its agencies or instrumentalities with respect to their acts or omissions colorably related to their official duties.".

Sec. 214. Section 3 of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694b) is amended to read as follows:

"Sec. 3. (a) Prior to the establishment of an appellate court for the Northern Mariana Islands the district court shall have such appellate jurisdiction over the judgments and orders of the courts established by the Constitution or laws of the Northern Mariana Islands as the Constitution and laws of the Northern Mariana Islands provide, except that such Constitution and laws may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including the covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America (covenant), or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Northern Mariana Islands or of any orders or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands with the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the district court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1(b)(2) of this Act: *Provided,* That only one of them shall be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division involving the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder: *Provided,* That the Court of Appeals for the Ninth Circuit shall not have jurisdiction of appeals in any cause involving only the Constitution and laws of the Northern Mariana Islands or the order or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands unless the appeal involves the consistency of such laws, orders, regulations, or actions with the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection. The provisions of this subsection, limiting the appellate review of the Court of Appeals to decisions involving Federal questions, shall not apply to any appeal or other method of review from the decisions of the local courts of Northern Mariana Islands pending on the effective date of this Act in the District Court of the Northern Mariana Islands, the United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States.".

CONFORMING AMENDMENTS

SEC. 215. Sections 335, 336, and 402(e) of the Act of November 6, 1978 (92 Stat. 2680, 2682), are repealed.

SEC. 216. Title II of this Act shall become effective on the first day of the third month following its enactment.

II

98TH CONGRESS
1ST SESSION

S. 1367

To repeal certain provisions of law relating to the territories and insular possessions of the United States.

IN THE SENATE OF THE UNITED STATES

MAY 25, 1983

Mr. WEICKER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To repeal certain provisions of law relating to the territories and insular possessions of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following provisions of law are repealed:

(a) Section 1839 of the Revised Statutes (48 U.S.C. 1451);

(b) Section 1840 of the Revised Statutes (48 U.S.C. 1452);

(c) Section 1841 of the Revised Statutes (48 U.S.C. 1453);

(d) Section 1873 of the Revised Statutes (48 U.S.C. 1453a);

(e) Section 1843 of the Revised Statutes (48 U.S.C. 1454);

(f) Section 1844 of the Revised Statutes (48 U.S.C. 1455);

(g) Section 1855 of the Revised Statutes (48 U.S.C. 1457);

(h) Section 1857 of the Revised Statutes (48 U.S.C. 1458);

(i) Section 1858 of the Revised Statutes (48 U.S.C. 1459);

(j) Section 1860 of the Revised Statutes, as amended (48 U.S.C. 1460);

(k) Section 1854 of the Revised Statutes (48 U.S.C. 1460a);

(l) Section 8 of the Act of March 22, 1882 (22 Stat. 31);

(m) Section 1 of the Act of June 19, 1878 (20 Stat. 193);

(n) Section 1868 of the Revised Statutes (48 U.S.C. 1463);

(o) Section 1864 of the Revised Statutes (48 U.S.C. 1463a);

(p) Section 1 of the Act of April 7, 1874 (18 Stat. 27);

(q) Section 1878 of the Revised Statutes (48 U.S.C. 1465);

(r) That portion of chapter 88 of the Act of May 1, 1876 (19 Stat. 43), which reads as follows: Payment of salaries of all officers of the territories of the United States appointed by the President shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such territory; and said oath shall hereafter be administered in the territory in which such office is held,";

(s) Section 1883 of the Revised Statutes (48 U.S.C. 1467);

(t) Section 1884 of the Revised Statutes (48 U.S.C. 1468), as amended by section 304 of chapter 18 of the Act of June 10, 1921 (42 Stat. 24);

(u) Section 1886 of the Revised Statutes (48 U.S.C. 1469) as amended by section 304 of chapter 18 of the Act of June 10, 1921 (42 Stat. 24);

(v) Section 1888 of the Revised Statutes (48 U.S.C. 1470);

(w) Section 1 of chapter 818 of the Act of July 20, 1886 (24 Stat. 170);

(x) Section 4 of chapter 818 of the Act of July 30, 1868 (24 Stat. 171) as amended by chapter 43 of the Act of August 22, 1911 (37 Stat. 33);

(y) Section 3 of 818 of the Act of July 30, 1886 (24 Stat. 171);

(z) Section 2 of chapter 679 of the Act of July 19, 1888 (25 Stat. 336);

(aa) Section 2 of chapter 818 of the Act of July 30, 1886 (24 Stat. 171);

(bb) chapter 35 of the Act of March 4, 1898 (30 Stat. 252);

(cc) chapter 820 of the Act of June 6, 1900 (31 Stat. 683);

(dd) Section 6 of chapter 818 of the Act of July 30, 1886 (24 Stat. 171);

(ee) Section 7 of chapter 818 of the Act of July 30, 1886 (24 Stat. 171);

(ff) chapter 235 of the Act of June 16, 1880 (21 Stat. 277);

(gg) Section 1892 of the Revised Statutes (48 U.S.C. 1482);

(hh) Section 1893 of the Revised Statutes (48 U.S.C. 1483);

(ii) Section 1894 of the Revised Statutes (48 U.S.C. 1485);

(jj) Section 1895 of the Revised Statutes (48 U.S.C. 1485);

(kk) Chapter 388 of the Act of June 22, 1874 (18 Stat. 135); and

(ll) Chapter 56 of the Act of April 16, 1880 (21 Stat. 74).

I

Union Calendar No. 112

98TH CONGRESS
1ST SESSION

S. 589

[Report No. 98–174]

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 1983

Referred to the Committee on Interior and Insular Affairs

MAY 16, 1983

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

AN ACT

To authorize $15,500,000 for capital improvement projects on Guam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(a)(1) of Public Law 95–348 (92 Stat. 487) as amended by Public Law 97–357 (96 Stat. 1705) is amended by deleting the word "and" where it last appears, and inserting after the words "fiscal year 1983," the words "and effective October 1, 1983, $15,500,000,".

SEC. 2. Funds authorized to be appropriated for the construction of a hydroelectric facility in Ponape pursuant to section 101 of Public Law 96-205 (94 Stat. 84), as amended, may be appropriated directly to the Secretary of the Army for expenditure by the Chief of Engineers on such construction.

SEC. 3. Section 205(c) of Public Law 96-205 (94 Stat. 87) is amended to read as follows: "As provided in section 602 of Public Law 94-241 (90 Stat. 263) the term "rebate of any taxes" shall apply only to the extent taxes have actually been paid pursuant to section 601 of said Act, shall not exceed the amount of tax actually paid for any tax year, and may only be paid following the close of the tax year involved. Notwithstanding any other provision of law, the Commonwealth of the Northern Mariana Islands shall maintain, as a matter of public record, the name and address of each person receiving a rebate, together with the amount of the rebate, and the year for which such rebate was made.".

SEC. 4. Section 303 of Public Law 97-357 (96 Stat. 1705, 1709) is amended by deleting "grants to" and inserting in lieu thereof "grants or loans to" and by deleting "power, to" and inserting in lieu thereof "power, and effective October 1, 1983 an additional $10,000,000, for grants or loans for such purpose, to".

Sec. 5. (a) Section 29 of the Revised Organic Act of the Virgin Islands (68 Stat. 509; 48 U.S.C. 1543) is amended to read as follows:

"Sec. 29. All members of the Legislature of the Virgin Islands, the Governor, the Lieutenant Governor, all judges and all officials of the government of the Virgin Islands who report directly to the Governor shall be citizens of the United States.".

(b) Subsection (c) of Section 10 of the Organic Act of Guam is further amended by deleting all through "Provided that any" and inserting in lieu thereof "Any".

(c) Section 1906(a)(55)(B) of the Act of October 4, 1976 (90 Stat. 1832) is amended by changing the matter inserted to read "emergency relief purposes and essential public projects."

Sec. 6. Section 501(d), of Public Law 95–134 (91 Stat. 1159, 1164), as amended, is amended by changing "$100,000" to "$200,000".

Sec. 7. Section 604(d) of Public Law 96–597 (94 Stat. 3477, 3481) is amended by inserting before the period "and may implement any projects or programs contained in recommendations of the plan".

Sec. 8. The Secretary of the Interior is directed to implement the health care program required by Section 106 of Public Law 95–134 (91 Stat. 1159) for the populations of *the four atolls in the Marshall Islands identified in such section immediately upon enactment of this section and shall promptly notify the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate if he finds that the populations of other atolls should be included in the program setting forth the basis for his finding and the estimated cost of extension of the program. The Secretary of Energy shall transmit annually to the Committee on Interior and Insular Affairs and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate together with the proposed budget for the next fiscal year, a description of the program and the estimated costs for implementation together with any recommendations which he may have for improvements in such program.*

Passed the Senate April 7 (legislative day, April 5), 1983.

Attest: WILLIAM F. HILDENBRAND,
Secretary.

Senator Weicker. I realize there may be Congressmen or Senators who have other hearings such as the one that we are in right now. If they would like to here make a brief statement at this time, I will be glad to take them out of order.

By the same token, if they want to present detailed testimony, that will be greatly appreciated by the committee, but in that case I would ask them to testify in the normal course of witnesses.

Is there anybody that would care to testify at this point?

Congressman Corrada. Senator, I would appreciate it if I could submit my testimony. We have other business in the House.

Senator Weicker. You sit down and go right ahead.

STATEMENT OF HON. BALTASAR CORRADA, DELEGATE FROM PUERTO RICO

Mr. Corrada. Good morning. My name is Baltasar Corrada, and I represent Puerto Rico in Congress. I am pleased to appear before you today to testify on this bill. My full statement consisting of three pages has been presented, and I ask that it be made part of the record.

I would like particularly to emphasize some matters pertaining to S. 589 as amended by the House.

There are two amendments which I totally support and urge the Senate to accept. The first would exempt the insular areas of the United States, including Hawaii, in addition to Puerto Rico and the other U.S. territories, from the provisions of Public Law 97-253. One of the provisions of that law established a 50-cent-per-hundredweight assessment on milk to discourage surplus production.

Since the markets in the insular areas are distinct and separate from the markets in the U.S. mainland, this assessment constitutes an unreasonable burden on our consumers. The provision excepting the insular areas of the United States, and Alaska, from the dairy assessment has been included in H.R. 1875, the Dairy Production Stability Act of 1983, which has been reported out of the Committee on Agriculture and is pending before the House.

There is support in the Senate for a similar extension. Since at this time it is quite unclear when the Congress will act on those bills, this legislation presents a good vehicle to address the issue.

Let me point out, Mr. Chairman, that Puerto Rico's milk statistics have never been considered or used by the USDA in its yearly dairy market studies and surveys. Puerto Rico cannot ship milk economically between the island and the mainland. Puerto Rico has never sold any of its dairy surplus to the Commodities Trading Corporation. It hasn't sold to the industry-sponsored surplus purchase program since 1957. In short, Puerto Rican milk has never affected and does not now affect the economics on the U.S. mainland, and therefore, it would appear that there is no significant public purpose in assessing that 50 cents per hundredweight in the island milk market, and I would urge the committee to adopt that amendment as part of this bill, as did the House.

Other than that, Mr. Chairman, my written testimony, of course, presents my full position concerning this area.

Senator Weicker. Thank you. Thank you very much for taking of your time. We will certainly give it serious consideration.

[The prepared statement of Mr. Corrada follows:]

BALTASAR CORRADA
Resident Commissioner, Puerto Rico

PAUL TORRES-VIEIRA
ADMINISTRATIVE ASSISTANT

COMMITTEES:
EDUCATION AND LABOR
INTERIOR AND INSULAR AFFAIRS

Congreſs of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE:
[illegible] Longworth House Office Building
Washington, D.C. 20515
Telephone (202) [illegible]

DISTRICT OFFICES:
[illegible] Federal Building
Room [illegible]
Chardón Street
Hato Rey, Puerto Rico [illegible]
Telephone (809) [illegible]

P.O. Box [illegible]
Ponce, Puerto Rico [illegible]
Telephone (809) [illegible]

TESTIMONY OF HON. BALTASAR CORRADA

ON S. 589, S. 1366, S. 1367

BEFORE THE SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY, ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

OCTOBER 6, 1983

Mr. Chairman, Members of the Subcommittee.

I am pleased to appear before you today to testify on: S. 1366, S. 1367 and S. 589 as amended and passed by the House of Representatives on Monday.

S. 1366 is a bill which deals with the relationship between the Unites States government and the Virgin Islands, Guam, and the Commonwealth of the Northern Marianas. I defer to the representatives of those governments for their testimony on that bill. S. 1367 seeks to repeal a number of provisions in the statutes relating to the territories that are no longer deemed necessary or relevant. These provisions deal with areas such as Indians, salaries of appointed territorial government officials, and other provisions which are not needed. My staff and the legal counsel to the Governor of Puerto Rico studied the legislation and concluded that the different provisions have no impact on Puerto Rico and thus we have no specific comments on this bill.

The third bill on the agenda this morning, S. 589, as amended by the House, is of great interest and importance to us.

There are two amendments which I strongly support and urge the Senate to accept. The first will exempt the insular areas of the United States - including Hawaii in addition to Puerto Rico and the other U.S. territories - from the provision of PL 97-253. One of the provisions of that law established a 50 cents per hundred weight assessment on milk to discourage surplus production. Since the milk markets in the insular areas are distinct and clearly separate from the market in the U.S. mainland, this assessment constitutes an unreasonable burden on our consumers. The provision exempting the insular areas of the U.S. and Alaska from the dairy assessment has been included in H.R. 1875, the Dairy Production Stability Act of 1983 which has been reported out of the Committee on Agriculture and is pending before the House. There is support in the Senate for a similar exemption. Since at this time it is unclear when the Congress will act on those bills, this legislation presents a good vehicle to address this issue. There is a clear understanding that there is no reason why this assessment should apply in the offshore areas of the U.S. considering the peculiarities of these markets.

The second provision broadens the authority in PL 96-597 to allow the implementation of the recommendation of the Territorial Energy Assessment report. That report was submitted to the Congress in December, 1982, pursuant to the directive in PL 96-597 to the Secretary of Energy to prepare comprehensive energy plans for each U.S. territory. Although the report was a welcomed first step in fulfilling the mandate of PL 96-597, it was very limited in scope. It consisted of a survey of existing sources of energy in Puerto Rico, but did not include a projection of energy needs to the year 2020; the identification and development of indigenous energy sources; nor the comprehensive plan required by the law. Because of Puerto Rico's need to diversify its energy source, the completion of the work mandated in PL 96-597 is very important. Renewable energy technologies have great potential in Puerto Rico and the other U.S. territories. Because of the cost involved and the current ample supplies of oil, the pressure has lessened in the search for alternate energy sources. However, the U.S. territories are in the front line of any future oil crisis and our distance from the U.S. mainland makes us particularly vulnerable to disruptions. The figure of $2 million authorized in S. 589 to implement the recommendations of the Territorial Energy Assessment Study is the minimum amount needed for FY 84. I urge you to request this funding in any supplemental appropriations bill for FY 84.

I urge you to accept S. 589 as amended by the House and recommend its approval by the Senate.

THANK YOU.

Mr. **Corrada**. I would like, by the way, to take this opportunity, Senator Weicker, to express to you my deep appreciation for your help in the Interior appropriations legislation, the $4.5 million to continue the restoration in Puerto Rico which with your help we and others were successful in getting that appropriation.

Senator **Weicker**. Congressman, let me say this to you. I was delighted to do it. It certainly wouldn't be there were it not for your efforts in getting things done over on the House side, and I am delighted to see all these high-level initiatives on behalf of all the nations of Central America, the Caribbean, and South America. A few initiatives now on behalf of our own possessions, Puerto Rico and the Virgin Islands, would also be helpful, and I am glad to participate in them.

Mr. **Corrada**. Thank you, Senator.

Senator **Weicker**. The next two witnesses will be Mr. Richard Montoya, who is the Acting Assistant Secretary for Territorial and International Affairs, Department of the Interior, and Mr. Robert Shanks, who is Deputy Assistant Attorney General, Office of Legal Counsel, the Department of Justice.

I'm sorry, Congressman Sunia. I beg your pardon. I didn't realize you wanted to testify at this time.

Mr. **Sunia**. I was just asking the Secretary if he is agreeable.

Senator **Weicker**. Absolutely; I am delighted to have you again before us, Congressman. You just sit down and speak what's on your mind. You have been very cooperative with this committee and we will do anything we can to help.

Mr. **Sunia**. Thank you very much. I was only late in getting up because I was deferring to my senior colleague, Mr. Won Pat.

I have a statement that has been prepared, and as per instructions, I ask it be incorporated in the record.

Senator **Weicker**. It will be.

STATEMENT OF HON. FOFO I. F. SUNIA, DELEGATE FROM AMERICAN SAMOA

Mr. **Sunia**. I might say, though, that the Government of American Samoa is in total agreement with this statement and the Governor has sent me his agreement. He also asked me to convey to you that he and the Commissioner have indicated our appreciation for assistance in the matter of the annual budget presentation for the Government of American Samoa.

A couple of points I would like to emphasize, sir, in the testimony—first, the waiver of matched funds requirements. A few years ago you all were kind enough to provide this waiver for the matching portion of the grant, and while this is greatly appreciated, if it would go to $200,000, it would mean far more ability to participate in our programs.

The other point which is also covered in the testimony relates to the constitution of American Samoa. We would appreciate very much favorable action on this as it indicates perhaps a step forward in our progress in democracy, in our democratic form of government for the Territory of American Samoa.

I might say, though, that in recent times our relations and, our working relations with the agency have improved tremendously, and along that line, let me say although it may be too much in advance that we welcome the new head of the Office of Territorial Affairs, the Acting Assistant Secretary, and we hope at some time very soon he will be confirmed and we would be very happy to work with him.

Thank you, Senator. I have nothing further to say.

[The prepared statement of Mr. Sunia follows:]

STATEMENT OF

CONGRESSMAN FOFŌ I.F. SUNIA

BEFORE THE
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE
ON
ENERGY CONSERVATION AND SUPPLY

THE HONORABLE
LOWELL P. WEICKER, JR.

OCTOBER 6, 1983
366 DIRKSEN SENATE OFFICE BUILDING

Good morning, Mr. Chairman:

And thank you for this opportunity to offer my comments and testimony regarding the bills now before the Subcommittee which affect our Territory of American Samoa and many of the other insular territories. I appreciate the chance to submit these brief remarks.

First and foremost, I am very happy and fully support S 589, as amended this week by the House.

I am most supportive of the provision in Section 12 which requires amendments to our Constitution of American Samoa to be approved by Congress. This has been on a long and arduous campaign that happily will conclude with the passage of this bill with that section. We have for some time been concerned about the unilateral ability of the Secretary of the Interior to be able -- as we say in the vernacular - 'with a stroke of the pen' -- amend our Constitution. If we are ever to attain the full rights and privileges, and the responsibilities of political maturity, and all that cannotes, then we have to be able to amend, revise, repeal, and adjust our Constitution with only the ultimate question of our political fortunes, Congress, as the final arbiter of basic law-- the Constitution.

There are several other sections that I am most pleased with and they are: Section 6, concerning the increase from $100,000 to $200,000 in waiver of matched funds requirements under Federal grants programs -- this will save the territory an estimated $3 million dollars each and every year; Section 7, which includes provisions for special grants to the territory under the Energy

Assessment Studies Program, (and we mean to take advantage of that important availability); Section 11, which allows a case-by-case adjustment to the Clean Air Act that will be most beneficial to us and; Section 14, which exempts the insular areas from the assessment to dairy farmers designed to partially support the milk price support program.

For all of these provisions and programs we sincerely thank the House and earnestly hope that the Senate, in its wisdom, will retain them in the final version of S 589, the Territorial Omnibus bill. We are deeply indebted to the Senate for initiating this timely and important legislation and there is much that my Territory of American Samoa must thank the Chairman and the distinguished members of this Subcommittee for -- we are truly grateful!

About the two companion bills S 1366 and S 1367, I can only say that we fully support the efforts of the Commonwealth of the Northern Mariana Islands to achieve U.S. Citizenship for specific purposes under certain Federal legislation -- I am supportive of their actions and hope that in the near future we in American Samoa may wish to emulate their efforts in this regard. The elements relating to Guam and the Virgin Islands are also worthy of support and, again, at some future date we may want to consider a similar path.

Concerning S 1367, the bill that would clean up title 48 prior to enactment of this title as positive law, I can see no problems or objections that we would have to repeals as they will substantially clear out archaic law that in many cases we have attempted to locally modernize and adapt to our local situation, within the Federal guidelines. I support the effort to clean up the law and only retain that which is important and vital to the insular territories. It is a good effort and should receive favorable consideration and passage.

Thank you, Mr. Chairman, for the opportunity to express my views on these important subjects to American Samoa and all the insular territories. I hope this Subcommittee's, the Full Committee's, and the Senate's consideration is favorable. Thank you for your courtesy and consideration.

Senator **Weicker**. Congressman, thank you very much, and we will go ahead and take a look. The waiver that you refer to, that was one of the amendments in the House bill?

Mr. **Sunia**. Yes, sir.

Senator **Weicker**. That raised it from $100,000 to $200,000?

Mr. **Sunia**. Yes, sir.

Senator **Weicker**. Incidentally, one thing I feel badly about is that due to Health and Human Services appropriations legislation and a few other things which came along, my election which came along, I have not had the opportunity to visit those jurisdictions which come under the purview of this committee. It is not out of a lack of interest. It is just a matter of having put together the time, and I hope I can do that some time when Congress recesses in this session. I just hope that your plans will also firm up. I figure timewise that will probably take about 3 weeks, just as a matter of distance, and the people whom we need to see, and I am sure when I do it, I will be accused of a junket, but in any event, you may rest assured of my deep interest in this matter of concern and opportunity to you, and the same holds true of the other territories, and we will be there once we get it worked out, and I will be working closely with your office on that aspect.

Mr. **Sunia**. Thank you very much. Robert Louis Stevenson who rates high in Samoa once said the fun of traveling is in anticipation. We will keep on anticipating that it will happen soon.

Senator **Weicker**. Thank you.

Mrs. **Sunia**. Thank you, sir.

Senator **Weicker**. Congressman, how are you? It's nice to see you here this morning. We are trying to get the whole thing together. You are talking to a New Englander. There is no place in New England that isn't 1 hour from some other place. That theory sort of goes out the window when you come to your part of the world.

Mr. **Won Pat**. I thought that you were scheduling the administration witnesses first. That is why I hesitated to come up.

Senator **Weicker**. Well, I did. I knew that Congressman Corrada did have to leave. You are prefectly welcome to stay and testify afterward. Whatever your schedule is; you do it at your convenience.

Mr. **Won Pat**. My schedule is I have a 9:45 Interior Insular Affairs Committee. Then I have a 10 o'clock military installation facilities hearing.

Senator **Weicker**. Is it your preference to testify now?

STATEMENT OF HON. ANTONIO BORJA WON PAT, DELEGATE FROM GUAM

Mr. **Won Pat**. Right. I certainly appreciate the courtesy and the opportunity to testify.

Mr. Chairman, I thank you for the opportunity to appear in my dual capacity as delegate from Guam and chairman of the House Subcommittee on Insular Affairs. Despite the multiplicity of issues that this area is concerned with, I will comment briefly on each bill.

Now S. 589, as you know, the House passed this bill Monday with 12 new sections. Our goal was to develop your worthwhile bill into this year's omnibus insular areas assistance bill so that a number of imperative needs could be met.

Rather than discuss the reasons for all that we added now, I ask that you include my statement of explanation to the House in the record of this hearing.

Senator WEICKER. It will be included.

Mr. WON PAT. I would only add that we worked long, hard and carefully to arrive at a unanimous, bipartisan consensus on the measure. Our staff consulted with yours on S. 589 and we refrained from adding any provisions to which we knew Senate sponsors would object. We hope that you will agree that the new House section deserves support.

Because of the nature of some of the problems that they will help overcome, we ask that you endorse the amended bill soon so that it can become law in this session.

Now let me go to S. 1366. I believe that there is conceptual support in my subcommittee for the aim of title I of S. 1366. Certainly the people of our newest territory should not have to suffer inconveniences or discrimination because problems in resolving the status of other parts of the trust territory has so long delayed the citizenship rights promised in the Northern Marianas covenant.

More than that, however, I cannot say. My subcommittee has received no better advice from the administration on how to resolve this issue than I gather you were promised last year. We have no preference among the approaches proposed, but would, of course, have to subject legislative language to thorough scrutiny before we approved it.

My comments on the judicial provisions are similar. Their intentions were valid, but we would have to hold hearings and do other work on this complex proposal before we could say we are ready for action.

To the extent that there is sufficient support in each territory affected for specific elements of the judicial reform package, I hope that it can be enacted in the 98th Congress. The territories' support is all important for self-determination demands that changes in Federal territorial relations not be forced on territories, no matter how worthwhile they are.

Further, my subcommittee will resist any effort to lump sensitive changes in judicial relations with unrelated territorial legislation. Let me note that with me on this panel—well, I am not with the panel, but the other panel from Guam is comprised, of course, of a jurist—Dr. Abbate, the Guam Superior Court presiding judge—who will be addressing, of course, you this morning, and two other gentlemen from Guam.

Now let me go on to 1367, S. 1367. Finally, my subcommittee would give prompt but proper study to S. 1367 if you sent it over to us. This effort to repeal some obsolete laws affecting the territories points to the need for a comprehensive joint Federal/insular review of the applicability of all Federal laws to the insular areas.

While the outdated laws this bill would repeal would be harmless, many others which would apply to us are not. Some which are applied to us were designed with mainland circumstances in mind and are entirely inappropriate for insular situations. They hamper attainment of our economic potential.

We have a bill which will provide for the needed review pending for action in the House. We intend that it be approved to be virtually identical to the Carter initiative as amended by the Senate in 1980. I hope that the House will give you another opportunity to approve the direly needed Federal Laws Commission for the insular areas in the not too distant future. That is the bill, of course, that calls for a commission to review all Federal laws affecting the territories, which is now in the committee, and it will be ready for the House soon.

That concludes my brief statement, sir, and I appreciate your kind attention.

[The prepared statement of Mr. Won Pat follows:]

Statement of the Hon. Antonio B. Won Pat, M.C.
to the U.S. Senate Subcommittee on Energy Conservation and Supply
on S. 589, S. 1366 and S. 1367
October 6, 1983

Chairman Weicker and Ranking Democrat Matsunaga:

Thank you for the opportunity to appear in my dual capacities as Delegate from Guam and Chairman of the House Subcommittee on Insular Affairs. Despite the multiplicity of issues that this hearing is concerned with, I will try to be brief.

S. 589

As you know, the House passed S. 589 Monday with 12 new sections. Our goal was to develop your worthwhile bill into this year's omnibus insular areas assistance bill so that a number of imperative needs could be met.

Rather than discuss the reasons for all that we added now, I ask that you include my statement of explanation to the House in the record of this hearing.

I would only add that we worked long, hard and carefully to arrive at a unanimous, bipartisan concensus on the measure. Our staff consulted with yours on S. 589 and we refrained from adding any provisions to which we knew Senate sponsors would object.

We hope that you will agree that the new House sections deserve support. Because of the nature of some of the problems that they would help overcome, we ask that you endorse the amended bill soon so that it can become law in this session.

S. 1366

I believe that there is conceptual support in my subcommittee for the aim of Title I of S. 1366. Certainly, the people of our newest territory should not have to suffer inconveniences or discrimination because problems in resolving the status of other parts of the Trust Territory has so long delayed the citizenship rights promised in the Northern Marianas Covenant.

More than that, however, I cannot say. My subcommittee has received no better advice from the administration on how to resolve this issue than I gather yours has since you were promised it last year. We have no preference among the approaches proposed but would, of course, have to subject legislative language to thorough scrutiny before we approved it.

My comments on the judicial provisions are similar. Their intent seems worthwhile. But we would have to hold hearings and do other work on these complex proposals before we could consider them ready for action.

To the extent that there is sufficient support in each territory affected for specific elements of the judicial reform package, I hope that they can be enacted in the 98th Congress. Territorial support is all-important for self-determination demands that changes in federal-territorial relations not be forced on territories no matter how worthwhile they are.

Further, my subcommittee will resist any effort to lump sensitive changes in judicial relations in with unrelated territorial legislation.

Let me note that with me on this panel is a jurist of exceptional ability, Guam's Superior Court Presiding Judge Paul Abbate, who may wish to address specific provisions of your bill.

S. 1367

Finally, my subcommittee will give prompt but proper study to S. 1367, if you send it over to us.

This effort to repeal some obsolete laws affecting the territories. points to the need for a comprehensive, joint federal-insular review of the applicability of all federal laws to the insular areas.

While the outdated laws this bill would repeal may be harmless, many other laws which apply to us are not. Some which are applied to us were designed with mainland circumstances in mind and are entirely inappropriate for insular circumstances. They hamper attainment of our economic potential.

We have a bill which would provide for the needed review pending floor action in the House. We intend that it be approved to be virtually identical to the Carter initiative as amended by the Senate in 1980.

I hope that the House will give you another opportunity to approve a direly-needed federal laws commission for the insular areas in the not-too-distant future.

Thank you.

Statement by the Hon. Antonio B. Won Pat
on S. 589

Mr. Speaker:

S. 589 was introduced at the request of the administration. The bill encountered no opposition in the Senate where it was revised slightly.

There was unanimous, bipartisan agreement to approve it in the Committee on Interior and Insular Affairs with an amendment. This was to effect necessary updating of previous territorial legislation as well as changes needed to adopt statutes, and regulations under them, to the unique circumstances of the insular areas.

The amendment I have proposed as a substitute with bipartisan Committee support incorporates the Committee's initial amendment but makes technical and other worthwhile improvements. It conforms with the purposes referenced in the Committee's approval of the bill and other goals which enjoy bipartisan support.

The amendment has no adverse budgetary implications. It responds to needs identified by the administration or the insular areas.

The primary purpose of the bill is to authorize essential capital improvements in my home territory of Guam.

Appropriations for most of this work - water and sewer infrastructure needed to develop our key private sector industry, tourism - have been approved by both Houses. They are also within the budget approved by this House. This project was endorsed by the administration after having been identified by our visionary governor, Ricardo Bordallo, as his top priority request.

The other funds are needed to complete the penitentiary for which appropriations were made in 1980.

The cost of the project expanded to accommodate design changes, including those needed to meet concerns of the Inspector General of the Interior Department who is doing an exemplary job in the territories.

Section 2 of the Senate bill would transfer the existing authorization for the construction of a hydroelectric power project on Ponape, a state of the Federated States of Micronesia, from the Department of the Interior to the Corps of Engineers.

The Corps, which conducted the feasibility study for the facility, is willing to handle construction. The $8 million project would result in substantial savings by replacing Ponape's current dependence upon imported petroleum with use of an abundant local resource.

My amendment would revise Section 3 of the bill as reported by the Committee to accommodate the concerns of the administration and the Senate as we have heard them and of the Northern Mariana Islands.

The overall intent of the amendment is the same as the Committee reported section, however: to facilitate implementation of an equitable system of income taxation as provided for in the Covenant between the United States and the Northern Marianas.

Section 601 is an integral part of our understanding with our newest territory. It provides that the Northern Marianas will have the same income tax rates as the United States applied as they are in Guam.

The necessity for Section 3, as reported by the Committee, is well explained in the Commitee's report; Chairman Udall's May 19 further explanation to the House; and a Committee staff paper on the background of this issue. I ask, at this time, that this latter document be included in the record at the conclusion of my statement.

To summarize, though, I would say that Section 3 was needed to make the Northern Marianas understand that while the Internal Revenue Code may be imperfect, it represents rules that they committed in the Covenant to joining the rest of us in living under. And this cannot be changed by unilateral action on their part.

Section 3, as reported, accomplished its purpose. It would be changed by my amendment to reflect the Northern Marianas' understanding of the points I have just made and would be , in fact, changed as they have suggested.

The revision would delay the effect of the original Section 3 until January 1, 1985. We would also permit the territory and the administration until that time to develop legislation that may be needed to adapt the Internal Revenue Code to the distinct situation of the Northern Mariana Islands.

By doing so we do not want to suggest that we would support a locally-determined alternative to I.R.C. rates or a system that will be inequitable to Guam or other parts of the United States. Instead, we are simply affording the territory and the administration time to convince Congress that I.R.C. rates need to be adapted to meet the islands' revenue requirements and ensure stable and sustained economic growth.

Further, because of this and because we recognize that it is impractical at this point to expect the territory to adhere to the mirrored I.R.C. for this tax year and, possibly, next as well, we would also accede to the request of the administration and the territory to defer the application of the mirror code until 1985.

In affording the Treasury and the territory until then to develop proposals or plan implementation of the mirror code, we have required regular reporting to the territorial policy committees of the Congress. These reports would be submitted by the responsible federal agency, the Department of the Interior, as well as the territory.

We make this time available, although both the federal agencies and the territory have had enough time already to implement the tax provisions of the Covenant or propose modifications, on the basis of good faith. We trust that when the distinguished Washington Representative of the Northern Marianas, Edward DLG. Pangelinan, other territorial officials and staff of the Assistant Secretary for Tax Policy inform us that they are close to an agreement on a proposed modification of the I.R.C. rates required under Section 601, they are serious this time. If nothing results, we will expect adherence to the letter and intent of the law and the treaty-like commitment of the Covenant. We hope that they also understand that we will never countenance more favorable tax treatment of the NMI than of Guam. Nor will we approve of a system that results in such an unreasonably light tax burden that the tax payers of the United States must subsidize in the Northern Marianas what the people there do not pay to support their local government responsibilities.

My amendment would also revise Section 4. The purpose is to obviate the problems that the administration has with the provision.

As reported by the Committee, Section 4 would have authorized a $10 million grant to fund the second phase of the territory's sorely needed four-year, $40 million program of power and water generation and distribution infrastructure improvements.

My amendment would delete this authorization and replace it with off-budget financing assistance. This would be accomplished by expanding the existing bonding authority of the territory. This would enable it to finance the improvements itself in the private market under the most favorable terms. This bonding authorization has already been approved in the FY '84 Interior appropriations bill but our language has a slight technical difference.

To further accommodate budget constraints, my amendment would also make the $10 million authorized by P.L. 97-357 as a grant for the first phase of the project eligible for loan or grant.

Due to the persuasiveness of the representative of the Virgin Islands, Ron de Lugo, the Committee on Interior and Insular Affairs continues to regard the improvements as absolutely essential to the welfare of the people of the islands and continued economic activity and growth. Further, the Committee believes that the imperative nature of the project and the significant element of federal responsibility for the financial difficulties of the territory justifies direct federal financing.

for the difficulty the territory faces in financing the project itself justifies direct federal financing.

However, since initiation of the improvements program should not be delayed, and the administration is resolutely against a grant for this purpose, Delegate de Lugo has agreed with us to facilitate funding as I have described.

My amendment would make no change in Section 5, as reported by the Committee, other than a technical amendment to accomplish the purpose of subsection c.

This section would remove three archaic and unnecessary restrictions currently in the organic acts of Guam and the Virgin Islands. It would limit the requirement that Virgin Islands government employees be United States citizens to principal elected and appointed officials. It would remove an unwarranted restriction on the ability of Guam to reapportion its legislature at the times it feels it is necessary to do so. It would lift restrictions on the use by the Virgin Islands of rum excise tax collections rebated to it for public improvements purposes that are not placed upon Puerto Rico for the use of the rum excise tax collections rebated to that territory.

My amendment would make no change in Section 6. The provision updates the waiver in existing law of requirements that American Samoa and the Northern Marianas provide matching funds up to $200,000 to receive program grants.

The primary rationale is that it makes little sense to match federal dollars with what are indirectly federal dollars. A secondary reason is that the expenditures of administrative effort and funds which are required for matching are counterproductive.

Further, I should note that our Committee agrees with the last administration that matching requirements should be selectively and flexibly imposed in the other U.S. territories so that all appropriate programs provide the maximum assistance possible.

My amendment also makes no change in Section 7. The provision would broaden the Secretary of Energy's authority in existing law to develop comprehensive energy plans for the insular areas . This would permit implementation of follow-up projects recommended in the Secretary's December 1982 report to the Congress.

It is our hope that these follow-up projects will be implemented. They are needed to implement the national policy of developing the renewable energy resources of our Caribbean and Pacific insular areas. They would reduce the fiscally-draining dependency of these islands on imported petroleum.

My amendment would also make no change in Section 8. This provision would direct the Department of the Interior to implement the health care program for the atolls of Bikini, Enewetak, Rongelap and Utirik in the Marshall Islands that is required in existing law.

The department would be required to report to congressional committees if it determined that other atolls ought to be included in the health care program because of their exposure to radiation through United States nuclear testing. Further, Interior would have to report annually to Congress on the progress of the program.

Section 9 responds to a request by the Department of Health and Human Services. The provision would delay the extension of the Social Security program to the Northern Mariana Islands to the January 1 following the termination of the Pacific Islands Trusteeship, or a mutally agreed date. This is in lieu of the date of termination of the trusteeship, as provided for in existing law.

The territory joins the administration in support of this amendment. It is needed to prevent technical and administrative problems which would result since the application of Social Security to the Northern Marianas involves the merger of the territorial social security program into the U.S. system, including funds and credits. Merger during the middle of a calendar year would be difficult.

Section 10 is identical to a provision that passed the Senate too late in the last Congress to be approved in the House. It would permit the Civil Aeronautics Board to make an essential air service determination for my own air transportation-dependent territory.

The C.A.B. agrees that such a provision is needed. This is because a judicial decision last year cast doubt upon their ability to make these determinations for locations already served by one Section 401 carrier.

While this sort of limitation might be appropriate for mainland locations with other forms of travel available, it clearly should not apply to Guam. My island is only linked to the United States by more than one certified U.S. carrier by a non-major carrier and service which makes many stops between Guam and Hawaii. This latter service is provided by Continental Airlines. Continental's bankruptcy makes this provision very important.

The relevant aspect of assessing the adequacy of Guam's air service should be direct U.S.-Guam flights. Hopefully, providing this territorial flexibility will lead to whatever steps are necessary to ensure that Guam is reliably tied to the United States by commercial air service.

The Environmental Protection Agency has proposed that it be granted the special territorial flexibility which would be provided by Section 11. Adjustments are needed to ensure that clean air standards are maintained in the unique circumstances of the territories through reasonable application of requirements.

My amendment modifies the administration proposal slightly to require reporting to the territorial policy committees of Congress on requests for territorial adjustment of requirements.

This provision is necessary to prevent undesirable imposition of requirements which would be impractical, unnecessary, or unreasonable in unique territorial situations. The conditioning factor is that clean air standards are maintained.

Our Committee has initiated legislation providing this sort of flexibility in modifying requirements in territorial circumstances to other Executive agencies in the past.

Section 12 provides for congressional approval of amendments to the Constitution of American Samoa. It is proposed at the request of the territory's effective Representative, Fofo Sunia, and it is supported by the islands' governor.

The constitution was written pursuant to authority delegated to the Executive Branch by Congress. We, of course, have full and ultimate responsibility for the territories under the Constitution.

The provision is necessary to prevent unilateral modifications of the territory's locally written Constitution by the Secretary of the Interior. Recently, the Secretary was prepared to remove a local official appointed by the popularly-elected governor and confirmed by the legislature by tampering with the territory's constitutional authority. Apparently, only strong, bipartisan opposition from the Congress, stimulated by Delegate Sunia, persuaded Interior not to proceed with what would have been an egregious violation of self government rights.

The Corps of Engineers has authority to study and plan for development, utilization and conservation of water and related land resources in all of the territories except for the newest member of the American political family. Section 13 would extend the existing territorial authorizations to the Northern Mariana Islands.

Section 14 would accomplish a bipartisan purpose of legislation approved by the Committee on Agriculture which, due to problems with an unrelated provision, is considered unlikely to be enacted in the near future. Because of uncertain fate of their bill and their recognition of the justification for the provision needed for the insular areas, the Agriculture Committee has graciously agreed to inclusion of the provision in our insular areas measure.

This is the product of work I have done with Puerto Rico's very capable representative, Baltasar Corrada, and Hawaii's equally able Representative, Danny Akaka. It is needed because of the apparently unintentional inclusion of the areas in the assessment to farmers in the dairy price support program.

Inclusion makes no sense because these areas comprise entirely separate and distinct milk markets. Production is locally regulated in the insular areas. Farmers there do not benefit from the price support program the assessment partially pays for, nor do they contribute to national surpluses.

Milk costs in the insular areas are already substantially above U.S. mainland prices. Extension of the assessment to them would only further increase the cost to farmers and, ultimately, consumers.

Finally, I want to recognize that this bill, although it represents the work of several of us on both sides of the aisle in this House, is really the work of our late and great colleague, Phil Burton.

As my predecessor as Chairman of the Subcommittee on Insular Affairs, Phil felt that the most effective way to properly and sensitively legislate on many unique needs of the insular areas was to do so through annual omnibus areas assistance bills. In addition to leading these efforts in the past, Phil initially constructed this bill.

With the dedication of my subcommittee's Ranking Republican, Bob Lagomarsino; the understanding of our full committee Chairman, Mo Udall and Ranking Republican Manuel Lujan; and now the participation of Phil's able wife and successor Sala Burton; we are continuing Phil's tradition of responsiveness to the Americans of the insular areas in this, Phil's last territories bill.

Senator **Weicker**. Thank you very much. We are looking forward to working with you on these matters. Thank you.

Mr. **Won Pat**. Thank you again.

Senator **Weicker**. Let's have another run at it. We will now have Mr. Richard Montoya, the Acting Assistant Secretary for Territorial and International Affairs, and Robert Shanks, the Deputy Assistant Attorney General for the Department of Justice.

Mr. Secretary, you can proceed.

STATEMENT OF RICHARD T. MONTOYA, ACTING ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. **Montoya**. Thank you, Mr. Chairman. It is a pleasure to be before your committee again. It seems like the last time we visited we were talking about Tumon Bay and I understand we will be visiting that issue again today.

It is a pleasure to be here with you. In the interest of time and according to your instructions, we will submit our written testimony for the record. At this time I would like to defer to Mr. Shanks on S. 1366.

Senator **Weicker**. Mr. Shanks, you go ahead.

[The prepared statement of Mr. Montoya follows:]

STATEMENT OF RICHARD T. MONTOYA, ACTING ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING S. 1366, S. 1367, and S. 589, ON OCTOBER 6, 1983.

Mr. Chairman. I am pleased to appear before the Committee this morning to present the views of the Department of the Interior on S. 1366, S. 1367, and S. 589.

S. 1366 - Citizenship and Courts

Title I of S. 1366 deals with United States citizenship issues affecting residents of the Northern Mariana Islands. Title II of the bill deals with appellate court review in the Virgin Islands and Guam, and Federal district court jurisdiction in the Northern Mariana Islands.

We defer to the Department of Justice regarding S. 1366.

S. 1367 - Repeal of Laws

S. 1367 would repeal statutes contained in chapter 10 of title 48 of the United States Code. They were enacted, for the most part, in the nineteenth century and applicable to former Territories of the western United States. They were intended to deal with Indians, and the structure and process of government in those western Territories. They were not enacted with the existing United States territories of the Virgin Islands, Guam, and American Samoa in mind.

With a few modifications, the Department of the Interior supports the repeal of these statutes. I wish to applaud this move to clear the statute books of archaic provisions that could, at some future date, cause unforeseen problems. This repeal would eliminate any question or ambiguity concerning the possibility of the statutes' application to existing territories. In most instances, if strictly construed, they would likely be found applicable only to incorporated Territories, that is, to Territories to which the Congress has expressly extended the United States Constitution. None of our existing territories are incorporated; all are unincorporated. Most of the subjects with which the statutes deal are covered by existing organic acts, constitutions, or the Northern Mariana Islands covenant. Therefore, despite removal from the statute books, most of the subjects covered by the provisions slated for repeal would continue to be covered, where necessary, by existing law.

We suggest the following modifications to S. 1367. First, we do not recommend the repeal of the first two statutes cited in the bill that relate to Indians. In general, it is difficult to be certain that laws pertaining to Indians are fully executed. Therefore, in the interest of caution, and in order to insure that no unintended deprivation occurs, we recommend that paragraphs (a) and (b) of the bill be deleted. At the same time, in order to make clear that the term "Indians" contained in these two sections, does not include indigenous people in any existing territory and that the word "Territory" does not mean any existing territory or commonwealth, we suggest that each of these sections of the Revised Statutes be amended to include the following sentence:

> As used herein, the term "Territory" does not include the Virgin Islands, Puerto Rico, American Samoa, Guam or the Northern Mariana Islands.

Second, we recommend that the statutes codfied in chapter 11 of title 48 of the United States Code be repealed. Generally, chapter 11 prohibits the ownership of land by aliens or non-United States citizens "in any of the Territories of the United States." Like most of the statutes codified in chapter 10, those appearing in chapter 11 probably do not now apply to existing territories, and it seems wise that they be repealed to prevent any chance of future misapplication.

Third, we recommend the repeal of the statute found in 48 U.S.C.A. 1469-1. This statute, derived from the appropriation act for 1916, concerns the handling of vouchers in the Territories. The procedure described has been obsolete for several decades.

Further, we recommend inclusion of the technical amendments noted in the Department's report on S. 1367.

S. 589 - Omnibus Territories Bill (As passed by House)

Section 1 of S. 589 would authorize $15.5 million in construction funds for Guam. The President's 1984 budget recommended, and the

Department of the Interior recommends, $4.038 million for the water and sewer component of the Tumon Bay development project for fiscal year 1984. Your Committee added $7.3 million for the road and drainage component of the Tumon Bay project, plus $4.1 million to complete the Guam penitentiary. As for the Guam penitentiary, the Executive branch agreed to construction funding in the amount of $6.5 million for fiscal year 1980. At that time, the government of Guam agreed to this funding level. We do not support a new authorization or appropriation of funds for the penitentiary. Since our agreed upon commitment has been met, we oppose raising the authorization for this project.

Section 2 would authorize direct appropriations to the Secretary of the Army for construction of hydroelectric facilities on Ponape. In order to maintain clear lines of authority, the jurisdiction of the Secretary of the Interior over the Trust Territory and Ponape hydroelectric facilities should be maintained. We, therefore, oppose section 2 unless language is added requiring approval of such a project by the Secretary of the Interior.

Section 3 would prohibit the Northern Mariana Islands from rebating income taxes effective January 1, 1985. At present, while the local government does not collect Federal income taxes, it continues to impose and collect a tax on wages and salaries. Any change in the existing income tax system in the Northern Mariana Islands should be based on mutual agreement and should include technical assistance to provide for a smooth transition and minimum disruption for the government of the Northern Mariana Islands and its taxpayers. The Administration is working with the government of the Northern Mariana Islands to revise the current Federal/Northern Mariana Islands income tax relationship to address current problems. The Administration will submit legislation to the Congress in the near future to resolve these concerns.

Since present law requires that the Northern Mariana Islands implement the so-called "mirror system" of tax collection as of January 1, 1983, we have no objection to sections 3(a) and 3(b) of the bill which will extend the deadline for imposing the system till January 1, 1985 and will allow consideration of the forthcoming Administration proposal. With regard to section 3(c), and its reporting requirement, we have not completed our review and are unable to comment at this time.

The Department of the Interior supports, with a small modification, subsection (b) of section 4. We are opposed to subsection (a) as duplicating subsection (b), but without the safeguards for the Federal government contained in (b). Subsection (b) would increase the loan limits of the existing loan guarantee program from $61 million to $101 million for the purpose of financing water and power projects in the Virgin Islands. Subsection (a) would provide an alternative funding mechanism of grants or direct loans from the Federal government in the amount of $20 million for the same purposes. The repayment of the loans under the loan guarantee program referenced in subsection (b) is secured by the Virgin Islands matching fund. There would be no such repayment security for the Federal government if project moneys were lent under subsection (a). The modification mentioned earlier involves the extension of the guarantee program from 1984 to 1990. The original guarantee program, enacted in 1976, was intended to be of short duration to ensure that construction was completed at an early date. The end date of the program has already been extended to 1984. We believe that the water and power problems of the Virgin Islands are sufficiently severe that construction should begin immediately and be completed within three years. We, therefore, suggest that the section 4(b) reference to "1990" be changed to "1986".

Subsection (a) of section 5 would delete the loyalty oath contained in the Virgin Islands Organic Act and require that only high officials of the government of the Virgin Islands be United States citizens. We have no objection to changing the requirements for citizenship for Virgin Islands government employees. We do object, however, to the deletion of the loyalty oath contained in section 29 of the Revised Organic Act of the Virgin Islands without providing a substitute. Article VI of the

United States Constitution requires:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all Executive and Judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . .

We believe it is good policy to continue the practice of requiring the Virgin Islands government officials to take an oath as the Constitution requires for state officials. We would have no objection, however, to a revision of the current oath as long as it meets the constitutional requirements applicable to the states. The Department of the Interior is opposed to the enactment of subsection (b) of section 5. The Organic Act of Guam, at present, provides that the Legislature of Guam may alter the manner in which the legislature of Guam is elected at ten-year intervals. The drafters of this 1966 amendment to the Organic Act sought to limit the amount of time legislatures would devote to revamping election laws. We realize that an issue of self-government is involved here. We believe, however, that the Organic Act provision is as important now as it was in 1966. We believe that legislative attention must remain focused on substantive issues and that alteration of the election laws every ten years is sufficient to ensure a properly constituted legislature that will meet constitutional tests.

The Department of the Interior is strongly opposed to the enactment of subsection (c) of section 5, which would eliminate the requirement that the President or his representative approve expenditures from the Virgin Islands matching fund. Because of financial accountability problems, we recently instituted a policy of increased financial control over Federal funds spent in the territories, including the Virgin Islands. The amendment in subsection (c) would reduce financial accountability and undercut our new policy. It should also be noted that the Secretary's guarantee of loans under Public Law 94-392 is secured by the Virgin Islands matching fund.

Section 6 would raise the matching grant waiver from $100 thousand to $200 thousand for American Samoa and the Northern Mariana Islands. Budgetary constraints prohibit such an increase. We are opposed to enactment of section 6.

Section 7, would grant authority to the Secretary of Energy that would allow him to implement any projects or programs recommended in the Territorial Energy Assessment-Final Report. We have no objection to section 7 as long as there is a requirement for approval of such projects or programs by the Secretary of the Interior.

With respect to section 8, we support the concept of specialized health care for the people of the Marshall Islands who have special health care needs resulting from the United States nuclear testing program. Section 106 of Public Law 95-134, as enacted by Public Law 96-205, established the intention to implement such a specialized health care program. We note, however, that basic health care is provided by the Department of Energy at this time, although in not as comprehensive a manner as contemplated in section 106. You are probably aware that funding for an expanded health program was recently deleted in conference from the Interior appropriation bill.

We also note that the Compact of Free Association, which was approved recently in the Marshall Islands by 57.9 percent of those voting, includes funding for a health program similar to that contained in section 106. Accordingly, we strongly oppose section 8 of the bill because the people of the Marshall Islands have already chosen to support the alternative health provisions contained in the Compact of Free Association. We recommend that the issue be considered in the context of the Compact, when the Compact is presented to the Congress for approval.

Section 9 would facilitate the combining of the social security system of the Northern Mariana Islands with that of the United States. We support section 9.

Section 10 would allow the Civil Aeronautics Board to conduct an essential air service study for Guam despite the territory being serviced by more than one airline. Given the problems of the airline industry and the speed with which airlines can withdraw service, we believe that the contingency planning that would result from enactment of section 10 may be desirable. We defer to the Civil Aeronautics Board on this provision.

Section 11 would amend the application of the Clean Air Act in the territories. A number of members of this Committee are familiar with the current requirement of the Clean Air Act under which the Guam Power Authority would be required to meet the new source performance standards for its Cabras Island electric generating plant. Although the Authority has discretion as to the method by which these standards are met, the available options are all costly. One option involves installation of $20 million worth of sea water scrubbers. This requirement is imposed despite the presence of air quality that meets the national ambient air quality standards of the Clean Air Act and the fact that 90% of the time prevailing winds blow pollution emitted by the plant out to sea. When the prevailing winds shift toward the land, the Authority burns low sulphur fuel. With these facts in mind, the Environmental Protection Agency last year suggested language in a hearing before this Committee that would provide a mechanism for granting exemption, on a case-by-case basis, from the Clean Air Act in the territories if the exemptions are deemed necessary and if national ambient air quality standards and any applicable emmission standards for hazardous air pollutants are met and maintained.

We believe that enactment of this narrowly drawn amendment, with enforceable clean air safeguards, applicable only to the territories, is essential. We do request, however, that the Virgin Islands be added to the list of territories as originally suggested by the Environmental Protection Agency. This would allow uniform treatment of the territories under this legislation. We urge your positive action in light of the fact that the Department of Justice recently renewed its request in the Federal District Court for Guam that the Guam Power Authority comply with the Clean Air Act.

With regard to section 12 and 13, we have not had time to complete our review because the provisions were added to the bill only three days ago on the House floor. We will complete our review shortly and submit our report to you in writing.

We defer to the Department of Agriculture on section 14, which deals with the milk price support program.

Again, thank you Mr. Chairman for the opportunity to appear before your Committee today.

STATEMENT OF ROBERT B. SHANKS, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY HERMAN MARCUSE, ATTORNEY-ADVISER, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. SHANKS. Thank you, Mr. Chairman. Accompanying me is Herman Marcuse who is——

Senator WEICKER. Pull that microphone up a little closer.

Mr. SHANKS. Sure. Mr. Chairman, accompanying me is Mr. Herman Marcuse, who is an attorney adviser in the Office of Legal Counsel.

We are pleased to be here to comment briefly on S. 1366. We have expressed our views in more detail in written comments on both title I and title II of the bill, and we propose amendments to both titles. Copies of our proposed amendments and a section-by-section analysis are attached to our written statement which I would like to summarize very briefly.

As you know, title I of S. 1366, like its predecessor——

Senator WEICKER. I can hear you, but the people in the back of the room cannot.

Mr. SHANKS. Thank you, Mr. Chairman. S. 1366, like its predecessor, S. 2088, would provide that in the interim period before the covenant to establish a Commonwealth of the Northern Marianas, citizens of the Northern Marianas would be deemed citizens of the United States for the purpose of several hundred statutory provisions. These provisions were contained in the interim report of the Northern Mariana Island Commission on Federal Laws.

This provision was prompted by the unexpected delay in the termination of the trusteeship agreement. As a result of this delay, the citizens of the Northern Mariana Islands are not yet citizens of the United States, although under section 502 of the covenant many, if not most, of the Federal statutes are applicable to them. The benefits of many of these statutes, however, are limited to citizens of the United States.

Title I would secure the benefits of these statutes for the citizens of the Northern Marianas. Last year the Departments of State and Justice opposed this legislation for two reasons.

First, State was concerned that deeming citizens of the Northern Marianas to be citizens of the United States for the purpose of so many statutes might be perceived as a surreptitious annexation and would lead to criticism in the international community.

Justice was concerned that the effect of deeming persons to be citizens with respect to so many—apparently several hundred—statutory provisions could not adequately be foreseen. It is my understanding that at last year's hearing on S. 2088 the Department undertook to draft a bill which would obviate these objections while accomplishing the goal of S. 2088 to relieve the citizens of the Northern Marianas of their predicament until the covenant takes effect. The draft bill attached to our statement complies with that undertaking.

The basic plan is simple this—instead of citing the statutory provisions in the body of the bill, the report of the Northern Mariana Islands Study Commission would be incorporated in a Senate document. The draft bill authorizes the President to provide by proclamation that the requirement of U.S. citizenship contained in any of the statutes listed in that document would be applicable to the citizens of the Northern Mariana Islands. Section 3 sets forth the standards for the exercise of the President's discretion.

Mr. Chairman, the bill also contains a mechanism to force the President to exercise his discretion. Section 4 of the bill provides that if the President does not issue a proclamation within 6 months of the effective date of the act, the requirements of U.S. citizenship or nationality as a prerequisite for any benefit, right, privilege, or immunity in any statute made applicable to the Northern Marianas, either by the terms of that statute or by the operation of the covenant, shall not be applicable to Northern Mariana Island citizens. Section 4 thus corresponds to section 109 of S. 1366 and, if triggered, would produce the same results as section 109.

For the same reasons that the Department of Justice opposed section 109 of S. 2088 last year, we believe this would be highly undesirable. Consequently, it is virtually certain, we believe, that the President will act to issue a proclamation to prevent the triggering of section 4.

Certain narrow categories of the statutes would be exempted from the operation of section 4 for the reasons which we have explained in our written statement.

Finally, the definition of citizens of the Northern Marianas in section 7(b) of our draft differs from the one contained in section 110 of S. 1366. Section 110 had defined Citizen of the Northern Mariana Islands by reference to section 8 of the transitional schedule of the constitution of the Northern Marianas. Section 8, however, has been interpreted by the U.S. Court of Appeals for the Ninth Circuit in the case of *Pangelinan* v. *Castro* so as to confer Northern Mariana citizenship on certain residents of those islands who will not become citizens of the United States under section 301 of the covenant. Since this legislation is intended to benefit those who will become citizens of the United States upon termination of the trusteeship, it seems inappropriate to make the bill applicable to persons who will not become citizens.

Also, since this bill does not actually determine citizenship but will require rapid determinations as to whether a person is entitled to the benefits of a particular statute, the definition of the term "citizen of the Northern Mariana Islands" has been somewhat simplified to permit a prompt determination.

I will now turn briefly to title II. This title appears to be identical with the provisions of S. 2729, a bill introduced in the 97th Congress relating to territorial courts. The Department of Justice supported that bill last year.

During the past year, we have received a number of comments from a variety of sources, including the Committee on Pacific Territories of the Judicial Conference of the United States, individual judges, and the bars of the Virgin Islands, Guam, and the Northern Mariana Islands. We have, therefore, proposed a number of changes, approximately 40 in all, to respond to these comments. Because of the number of proposed changes, we have included them in a proposed substitute bill, accompanied by a section-by-section analysis, rather than as proposed amendments to the existing title II.

The great majority of these proposed changes are of a minor, technical nature. The relatively few substantive recommendations are described in the numbered paragraphs 1 through 8 of our statement. Mr. Marcuse is familiar with the comments we have received and can answer your questions about proposed changes to title II.

Finally, with respect to S. 1367, a bill to repeal certain provisions relating to the territories, the Department of Justice has no comments and, therefore, defers to the views of the Department of Interior.

This concludes my remarks, Mr. Chairman, and Mr. Marcuse and I will be glad to answer any questions.

[The prepared statement of Mr. Shanks follows:]

Department of Justice

STATEMENT

OF

ROBERT B. SHANKS
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

BEFORE

THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
UNITED STATES SENATE

CONCERNING

S. 1366 AND S. 1367

ON

OCTOBER 6, 1983

Mr. Chairman:

My name is Robert B. Shanks. I am a Deputy Assistant Attorney General in the Office of Legal Counsel, Department of Justice. I am accompanied by Herman Marcuse, who is an attorney-adviser in the Office of Legal Counsel.

I am pleased to comment on S. 1366, 98th Cong. 1st Sess.

Title I of S. 1366, 98th Cong., appears to be identical with S. 2088, 97th Cong., 2d Sess.; Title II of S. 1366 incorporates generally those provisions of S. 2729, 97th Cong., 2d Sess., which relate to the courts of the Virgin Islands, Guam, and the Northern Mariana Islands.

I.

Title I of S. 1366 would provide generally, as did S. 2088, that the citizens of the Northern Mariana Islands be deemed citizens of the United States for the purposes of several hundred statutory provisions contained in the Interim Report of Northern Mariana Islands Commission on Federal Laws.

Title I has been prompted by the unexpected delay in the termination of the Trusteeship Agreement. As the result of that delay, the citizens of the Northern Mariana Islands are not as yet citizens of the United States, although as the result of § 502 of the Covenant to establish the Commonwealth of the

Northern Mariana Islands many, if not most, of the federal statutes are applicable to them. The benefits of many of those statutes, however, are limited to citizens of the United States.

In the past this situation, which frequently lead to hardship, has been remedied in a piecemeal manner by proclamations issued by the President under § 1004(a) of the Covenant, which authorizes the President to suspend the application of federal laws in the Northern Mariana Islands if their application would be contrary to the Trusteeship Agreement. Three proclamations have been issued under this narrowly circumscribed authority suspending, among others, the citizenship requirement with respect to jury duty, and certain provisions of the Communications Act of 1934. This problem has also been dealt with by way of specific legislation. Thus, recently citizens of the Northern Mariana Islands have been made eligible to become officers in the armed forces of the United States.

Title I of S. 1366 is based on the Interim Report of the Northern Mariana Islands Commission on Federal Laws. It seeks to deal with this problem in a general manner, by providing that the citizens of the Northern Mariana Islands be deemed to be citizens of the United States for the purposes of several hundred statutes, thus securing for them the benefits of the statutes. Last year the Department of State and the Department of Justice opposed S. 2088, 97th Cong., 2d Sess., the forerunner of Title I, basically for two reasons. First, the provisions "deeming" the citizens of the Northern Mariana Islands to be citizens of the United States might be considered to amount to surreptitious annexation of the Northern Mariana Islands, which could hurt the United States in the international forum. Second, it was felt that the effect of "deeming" the citizens of the Northern Mariana Islands to be citizens of the United States with respect to so many statutory provisions could not be adequately foreseen. This was particularly true of the so-called "blunder-bus" effect of § 9 of the 1982 bill, now § 109 of S. 1366.

The Department of Justice undertook to draft a bill which would obviate those objections, in particular to prepare legislation which would authorize the President to give the citizens of the Northern Mariana Islands the type of relief envisaged by S. 2088, and which would contain a mechanism that would force the President to exercise that authority. We believe that the draft bill attached to this report fairly complies with that undertaking.

The basic plan of our draft bill is as follows: Instead of citing the statutory provisions referred to in the Interim Report of the Northern Mariana Islands Commission in the body of the bill, that report would be incorporated in a Senate Document.

Section 2 of the draft bill would authorize the President to provide by proclamation that the requirement of United States citizenship contained in any of the statutes listed in that Senate Document shall not be applicable to the citizens of the Northern Mariana Islands. The President may correct clerical errors in the list of statutes, e.g., errors in the citation of statutes; and add to its provisions, e.g., where it appears that it is intended to render the requirement of citizenship inapplicable to a specific statute, but the list of documents omits pertinent sections of that statute.

Section 3 sets forth the standards for the exercise of the President's discretion. These standards are briefly, on the one hand, the hardship suffered by the citizens of the Northern Mariana Islands resulting from the delay in their becoming United States citizens, and, on the other hand, the responsibilities, obligations, and limitations imposed on the United States by international law.

Section 4 contains the forcing mechanism of the bill. This provision would work as follows: If the President does not issue a proclamation within six months after the effective date of the Act, the requirements of United States citizenship or nationality as a prerequisite of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant shall not be applicable to citizens of the Northern Mariana Islands. Section 4 corresponds to § 109 of S. 1366 and, as indicated above, we believe the result it would produce, if triggered, would be highly undesirable for the same reasons we opposed § 9 of S. 2088 last year. Hence, under our draft bill, it would be virtually certain that the President will issue a proclamation in order to prevent § 4 from becoming effective. Excepted from the operation of § 4 would be statutes relating (a) to the political rights of citizenship, such as the right to vote and to perform jury service, since the grant of such rights would be the equivalent of annexation; and (b) statutes relating to the diplomatic protection of, and services to, citizens or nationals of the United States. The citizens of the Northern Mariana Islands are entitled to diplomatic protection by the United States under Article 11(2) of the Trusteeship Agreement with the Security Council of the United Nations. 61 Stat. 3304. It is questionable whether foreign countries would recognize the authority of the United States to give diplomatic protection to persons who are not citizens or nationals of the United States if that authority is based on a municipal statute, rather than on an international agreement. With respect to the statutes relating to the uniformed services, the privilege of § 4 would be available only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise the option under § 302 of the Covenant to become a national, but not a citizen, of the United States. This limitation is substantially identical to § 102 of S. 1366.

Section 5 of the bill is designed to preclude unintended conflicts between this legislation and the Covenant, especially with § 503, pursuant to which the United States undertook not to introduce certain laws into the Northern Mariana Islands prior to the termination of the Trusteeship Agreement. Involved here are basically the immigration and nationality laws, the coastwise shipping laws, and the minimum wage laws.

The definition of citizens of the Northern Mariana Islands in § 7(b) of our draft bill differs from the one in

§ 110 of S. 1366. Section 110 defines citizens of the Northern Mariana Islands by reference to § 8 of the Transitional Schedule of the Constitution of the Northern Mariana Islands. Section 8, however, has been interpreted in Pangilinan v. Castro, 688 F.2d 610 (9th Cir. 1982), so as to confer Northern Mariana Island citizenship on certain residents of those islands who will not become citizens of the United States under § 301 of the Covenant. Since this legislation is intended to constitute merely a stopgap measure designed to benefit those who will become citizens of the United States upon the termination of the Trusteeship Agreement, it would appear inappropriate to make the bill applicable to persons who will not at that time become citizens of the United States. Moreover, this bill will not involve the determination of citizenship as such, but will require many *ad hoc* decisions, which may have to be made speedily, as to whether a person is entitled to the benefits of a specific statute. The definition of the term "citizen of the Northern Mariana Islands" therefore has been somewhat simplified to permit a prompt determination of that term based on readily available documents.

Section 8 would provide that, when the citizens of the Northern Mariana Islands acquire United States citizenship upon the termination of the Trusteeship, the benefits acquired pursuant to this legislation will be counted for purposes of seniority and priority as of the time of that acquisition, and not as of the time when they became citizens of the United States.

I now pass to title II of S. 1366. This title incorporates generally those provisions of S. 2729, 97th Cong., 2d Sess., which relate to the courts of the Virgin Islands, Guam, and the Northern Mariana Islands.

Since last Fall's hearings on S. 2729, we have received comments on S. 2729 from many sources, including the Committee on Pacific Territories of the Judicial Conference of the United States, individual judges, and the bars of the Virgin Islands, Guam, and the Northern Mariana Islands.

We have sought to give effect to those suggestions to the greatest extent possible. Many of those proposals are merely of a stylistic or clarifying nature. Only a few go to the substance of S. 1366. In view of the considerable number of proposed changes, we felt it preferable not to submit a list of some 40 suggested amendments, but rather to prepare a complete proposed redraft of the bill. The section-by-section analysis explains the differences between our proposal and title II of S. 1366. The draft bill and the section-by-section analysis are attached to this prepared statement.

The principal differences between S. 1366 and our proposal are as follows:

1. The amendments to § 22(a) of the Revised Organic Act of the Virgin Islands, § 22(a) of the Organic Act of Guam, and 2(a) of the Act of November 8, 1977, 48 U.S.C. § 1694(a), provide specifically that the territorial district courts shall have diversity jurisdiction. While we do not believe that such express provision is necessary, we have received many suggestions that this point should be made absolutely clear.

2. Section 22(a) of the Revised Organic Act of the Virgin Islands and § 22 of the Organic Act of Guam have been amended to indicate that the local legislatures have the power to restore the jurisdiction of the district court over local causes.

3. Probably the greatest change from S. 1366 is the elimination from §§ 204, 205, 209 and 314 of the provisions which would limit the appellate jurisdiction of the Courts of Appeals to causes involving federal questions. The pertinent comments we have received were generally opposed to that limitation.

4. Our proposal establishes the institution of a senior territorial judge by analogy to 26 U.S.C. § 7477 and 28 U.S.C. § 797, relating to the Tax Court and the United States Claims Court, respectively. Such senior territorial judge may be recalled to active service by the Chief Judge of the Judicial Circuit in which the territorial judge served prior to his retirement. See § 403 of our draft.

5. Our draft omits the reference to the exclusive jurisdiction of the district court of the Virgin Islands over proceedings involving the Virgin Islands income tax laws in § 22(a) of the Revised Organic Act of the Virgin Islands (see § 203 of S. 1366). Instead it deals with that and other related problems in an amendment to § 1 of the Act of July 12, 1921, 48 U.S.C. § 1397. See § 109 of our draft.

6. Section 213 of S. 1366 deals with the question of the jurisdiction of the District Court for the Northern Mariana Islands. We have modified the language of that provision in order to clarify it (see § 302 of our draft), and have also added a new § 401 which assures the jurisdiction of the High Court of the Trust Territory with respect to certain causes of action over which the district court would not have jurisdiction under § 302.

7. Section 301(c) of our proposal amends § 1(c) of the Act of November 8, 1977, 48 U.S.C. § 1694(c), in order to conform that provision to the corresponding proposals relating to the Virgin Islands and Guam which make Part II of title 18 and title 28 United States Code generally applicable to those territories. See the amendments of § 24(b) of the Revised Organic Act of the Virgin Islands, and § 22D of the Organic Act of Guam, as provided for in §§ 206(b) and 209 of S. 1366 and in §§ 106(b) and 201 of our proposal.

8. Section 404 of our proposal sets forth specifically the situations in which the government of a Territory may appeal an adverse decision in a criminal case to a federal court. This provision has been occasioned by the decision in People of the Territory of Guam v. Okada, 694 F.2d 565 (9th Cir. 1983), which required specific federal statutory authority for such appeals. Section 404 is based on 18 U.S.C. § 3731.

With regard to S. 1367, we defer to the views of the Department of the Interior. That bill would repeal about forty apparently obsolete statutory provisions collected in Chapter 10, title 48, United States Code.

I am at the end of my prepared statement. If there are any questions, Mr. Marcuse and I will try to answer them.

9-21-83

A Bill

To provide that the requirement of United States citizenship provided for in particular Federal statutes shall not be applicable to citizens of the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no provision of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall bar the United States of America from paying compensation to or employing any citizen of the Northern Mariana Islands.

Sec. 2. (a) The President may, subject to the provisions of Sec. 3 of this Act, by proclamation provide that the requirement of United States citizenship or nationality provided for in any of the statutes listed on pages [63-74] of the Interim Report of the Northern Mariana Islands Commission on Federal laws to the Congress of the United States, dated January 1982, S. Doc. No. (198_) (list) shall not be applicable to the citizens of the Northern Mariana Islands. The President is authorized to correct clerical errors in the list, and to add to it provisions, where it appears from the context that they were inadvertently omitted from the list.

(b) A statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors shall, for the purposes of this Act, be considered to impose a requirement of United States citizenship or nationality.

Sec. 3. (a) The President may issue one or more proclamations under the authority of this Act.

(b) When issuing such proclamation or proclamations the President --

(1) shall take into account:

(i) the hardship suffered by the citizens of the Northern Mariana Islands resulting from the fact that, while they are subject to most of the laws of the United States, they are denied the benefit of those laws which contain a requirement of United States citizenship or nationality;

(ii) the responsibilities, obligations, and limitations imposed upon the United States by international law;

(2) may make the requirement of United States citizenship or nationality inapplicable only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under Sec. 302 of the Covenant to become a national but not a citizen of the United States.

(3) may make the requirement of a United States citizenship or nationality inapplicable only in the Northern Mariana Islands;

(4) may retain the requirement of United States citizenship or nationality with respect to parts of a statute or portion thereof.

Sec. 4. If the President does not issue any proclamation authorized by Sec. 2 of this Act within a period of six months following the effective date of the Act, the requirement of United States citizenship or nationality as a prerequisite of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant shall not be applicable to citizens of the Northern Mariana Islands: Provided, That the provisions of this section shall not be applicable to any requirements of United States citizenship or nationality contained in statutes relating to the political rights of citizenship, and to the diplomatic protection of, and services to, citizens or nationals of the United States in foreign countries: Provided further, That with respect to the statutes relating to the uniformed services, the requirement of United States citizenship or nationality shall remain in effect, except with respect to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under Sec. 302 of the Covenant to become a national but not a citizen of the United States.

Sec. 5. Nothing in this Act shall be construed as extending to the Northern Mariana Islands any statutory provision or regulation not otherwise applicable to or within the Northern Mariana Islands, in particular the statutes relating to immigration and nationality and the regulations issued under them.

Sec. 6. The authority of the President to issue proclamations under Sec. 2 of this Act shall terminate upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to Sec. 1002 of the Covenant. Sec. 4 of this Act shall not become effective if the Commonwealth of the Northern Mariana Islands is established within the period of six months following the effective date of this Act.

Sec. 7. As used in this Act:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by the Joint Resolution of March 24, 1976, 90 Stat. 263, 48 U.S.C. 1681, note.

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who --

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or

(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since March 24, 1971, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

Sec. 8 Upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to Sec. 1002 of the Covenant, the benefits acquired under this Act shall merge without interruption into those to which the recipient is entitled by virtue of his acquisition of United States citizenship, unless the recipient exercises his privilege under Sec. 302 of the Covenant to become a national but not a citizen of the United States.

9/21/83

A BILL

To amend certain provisions of the laws governing the judicial systems applicable to the Virgin Islands, Guam and the Northern Mariana Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

SEC. 101. In Section 3 of the Revised Organic Act of the Virgin Islands, as amended, (68 Stat. 4981; 48 U.S.C. 1561) the proviso in the next to the last paragraph is amended to read as follows:

"*Provided*, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to Section 22(a) and (c) of this Act and Section 1 of the Act of July 12, 1921, as amended by Section 109 of this Act, may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to Section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury."

SEC. 102. Section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"SEC. 21. (a) The judicial power of the Virgin Islands shall be vested in a court of record designated the 'District Court of the Virgin Islands' established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by Section 22(a) and (c) of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts."

SEC. 103. (a) Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1612) is amended to read as follows:

"SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and, effective April 1, 1984, that of a bankruptcy court of the United States.

"(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

"(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section."

(b) The provisions of this section shall not result in the loss of jurisdiction of the District Court of the Virgin Islands over any complaint or proceeding pending in it on the day preceding the effective date of this amendatory Act, and such complaint and proceeding may be pursued to final determination in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and the Supreme Court, notwithstanding the provisions of this amendatory Act.

SEC. 104. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1613) is amended to read as follows:

"SEC. 23. The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by Section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the highest court of the Virgin Islands from which a decision could be had. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section."

SEC. 105. The Revised Organic Act of the Virgin Islands is amended by adding to it a new section 23A:

"SEC. 23A. (a) Prior to the establishment of the appellate court authorized by Section 21(a) of this Act, the District Court of the Virgin Islands shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law as the legislature may determine: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or with any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the District Court of the Virgin Islands shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24(a) of this Act: Provided, That only one of them shall be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) Upon the establishment of the appellate court provided for in Section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court."

SEC. 106. (a) Section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended to read as follows:

"(a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of 10 years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under Section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or a recalled senior judge of the District Court of the Virgin Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States."

(b) Section 24(b) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(b)) is amended to read as follows:

"(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of Rule 7(a) and of Rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: Provided, That the terms "Attorney for the government" and "United States attorney" as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the Virgin Islands Territorial income tax, mean the Attorney General of the Virgin Islands or such other person or persons as may be authorized by the laws of the Virgin Islands to act therein: Provided further, That in the district court all criminal prosecutions under the laws of the United States and all criminal prosecutions under local law under Section 22(c) of this Act and under Section 1 of the Act of July 1, 1921, as amended by Section 109 of this Act, may be had by indictment by grand jury or by information: Provided further, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to Section 22(b) of this Act shall continue to be had by information, except such as may be required by local law to be prosecuted by indictment by grand jury."

SEC. 107. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1615) is amended to read as follows:

"SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie."

SEC. 108. Section 27 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1617) is amended by substituting the words "courts established by local law" for "inferior courts of the Virgin Islands" wherever they appear, and by deleting the last two sentences.

Sec. 109.(a). Section 1 of the Act of July 12, 1921 (42 Stat. 123, 48 U.S.C. 1397), as amended, is further amended to read as follows:

"Sec. 1. (a) The income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States: Provided, That those laws shall be deemed to impose a separate Territorial income tax, designated the "Virgin Islands Territorial income tax," payable to the government of the Virgin Islands: Provided further, That notwithstanding any other provision of law, the Legislature of the Virgin Islands is authorized to levy a surtax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of the Virgin Islands.

"(b) Notwithstanding the provisions of the Revised Organic Act of the Virgin Islands, as amended, or any other provision of law to the contrary, the the District Court of the Virgin Islands shall have exclusive original jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the Virgin Islands Territorial income tax, regardless of the degree of the offense or of the amount involved, except the laws ancillary to the Virgin Islands Territorial income tax which have been enacted by the legislature of the Virgin Islands.

"(c) Any act or failure to act with respect to the Virgin Islands Territorial income tax which constitutes a criminal offense under chapter 75 of sub-title F of the Internal Revenue Code of 1954, as included in the income tax laws in force in the Virgin Islands pursuant to subsection (a) of this section, shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States Attorney for the Virgin Islands, notwithstanding the provisions of Section 27 of the Revised Organic Act of the Virgin Islands.

"(d) A civil action for the collection of the Virgin Islands Territorial income tax, together with fines, penalties, and forfeitures, or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of the Virgin Islands in the District Court of the Virgin Islands or in any district court of the United States or in any court having the jurisdiction of a district court of the United States. If such civil action is brought in a district court other than the District Court of the Virgin Islands, the Attorney General of the United States may at the request of the Governor of the Virgin Islands represent the government of the Virgin Islands on such conditions as may be agreed upon. Such conditions may provide for the reimbursement of the Department of Justice for services rendered or costs incurred, notwithstanding the provisions of Section 3302, title 31, United States Code.

(b) Section 1340 of title 28, United States Code is amended to read as follows:

"§ 1340. Internal revenue; customs duties

"(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

"(b) The district courts shall have original jurisdiction of any civil action brought by the government of any territory, possession, or commonwealth for the recovery of any income tax owed to such territory, possession or commonwealth, together with fines, penalties, and forfeitures, or for the recovery of any erroneous refund of such tax."

SEC. 110. The Act of May 20, 1932 (47 Stat. 160; 48 U.S.C. 1400) is repealed.

Title II

SEC. 201. Section 22 of the Organic Act of Guam (64 Stat. 389; 48 U.S.C. 1424), as amended, is amended to read as follows:

"SEC. 22. (a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with Sec. 22A of this Act.

"(b) The District Court of Guam shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in § 1332 of title 28, United States Code, and, effective April 1, 1984, that of a bankruptcy court of the United States.

"(c) In addition to the jurisdiction described in subsection (b) of this section the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdiction over which is not then vested by the legislature in another court or other courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

"SEC. 22A.(a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act, the legislature of Guam may in its discretion establish an appellate court.

"(b) The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of Guam by Section 22(b) of this Act.

"(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.

"SEC. 22B. The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by Section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the highest court of Guam from which a decision could be had. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"Sec. 22C.(a) Prior to the establishment of the appellate court authorized by Section 22A(a) of this Act, the District Court of Guam shall have such appellate jurisdiction over the local courts of Guam as the legislature may determine: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this Act, or with any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside there unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24 of this Act: Provided, That only one of them shall be a judge of a local court of Guam. The concurrence of two judges shall be necessary to any decision of the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) Upon the establishment of the appellate court provided for in Section 22A(a) of this Act all appeals from the decisions of the local courts not previously taken must be taken to the appellate court. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

"SEC. 22D. Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provision in Rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18 and 28, United States Code, shall apply to the District Court of Guam and appeals therefrom; except that the terms 'Attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, including the Guam Territorial income tax, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein."

SEC. 202. Section 24 of the Organic Act of Guam, as amended (64 Stat. 390; 48 U.S.C. 1424b), is amended, by:

(a) by substituting in the first paragraph of subsection (a) the words "for the term of ten years" for "for a term of eight years";

(b) substituting in the second paragraph of subsection (a) the words "a local court of record" for "the island Court of Guam";

(c) inserting in the second paragraph of subsection (a) between the words "ninth circuit" and "or" the words "or a recalled senior judge of the District Court of Guam or of the District Court for the Northern Mariana Islands".

(d) substituting in subsection (b) the numbers "35" and "37" for "31" and "33", respectively; and

(e) deleting subsection (c).

SEC. 203. Section 1 of the Act of August 27, 1954 (68 Stat. 882) is amended by repealing that portion which reads:

"that no provision of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further".

Title III

"SEC. 301 Section 1 of the Act of November 8, 1977 (91 Stat. 1265, 48 U.S.C. 1694) is amended by:

(a) substituting in subsection (b)(1) the words "for a term of ten years" for "for a term of eight years".

(b) inserting in subsection (b)(2) between the words "President" and "or", the words "or a recalled senior judge of the District Court of Guam or of the District Court of the Northern Mariana Islands".

(c) substituting the following for subsection (c):

"where appropriate, and except as otherwise provided in articles IV and V of the Covenant approved by the Act of March 24, 1976 (90 Stat. 263), the provisions of part II of title 18 and of title 28, United States Code, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18 and 28, United States Code, shall apply to the District Court for the Northern Mariana Islands and appeals therefrom; except that the terms 'Attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of the Northern Mariana Islands, include the Attorney General of the Northern Mariana Islands or such other person or persons as may be authorized by the laws of the Northern Mariana Islands to act therein."

SEC. 302. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694a(a)) is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in § 1332 of title 28, United States Code, and, effective April 1, 1984, that of a bankruptcy court of the United States. With respect to the government of the Trust Territory of the Pacific Islands or its agencies or instrumentalities the jurisdiction of the district court shall extend only (a) to actions brought by that government or its agencies or instrumentalities, (b) to actions brought against that government or its agencies or instrumentalities based upon a commercial activity carried on by that government or its agencies or instrumentalities within the Northern Mariana Islands, and (c) to actions in which money damages are sought against that government or its agencies or instrumentalities for personal injury or death, or damage to or loss of property, occurring in the Northern Mariana Islands and caused by the tortious act or omission of that government or its agencies or instrumentalities, or of any official or employee thereof while acting within the scope of his office or employment, except any claim based upon the exercise or failure to exercise a discretionary function, regardless of whether the discretion be abused, or any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. In any suit by or against the government of the Trust Territory or its agencies or instrumentalities permissible under this section, that government or its agencies or instrumentalities shall be entitled to such rights and privileges as are applicable to the United States when it is a party. In cases in which the district court would have no jurisdiction over the government of the Trust Territory of the Pacific Islands if suit were brought against it, the district court shall equally have no jurisdiction over actions brought against the officers or employees of that government or its agencies or instrumentalities with respect to their acts or omissions colorably related to their official duties."

SEC. 303. Section 3 of the Act of November 8, 1977 (91 Stat. 1266 48 U.S.C. 1694b) is amended to read as follows:

"SEC. 3(a) Prior to the establishment of an appellate court for the Northern Mariana Islands the district court shall have such appellate jurisdiction over the courts established by the Constitution or laws of the Northern Mariana Islands as the Constitution and laws of the Northern Mariana Islands provide, except that such Constitution and laws may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant), or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Northern Mariana Islands or of any orders or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands with the Constitution, treaties, or laws of the United States, including the Covenant, or with any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the district court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1(b)(2) of this Act: Provided, That only one of them shall be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court.

SEC. 304. Section 4 of the Act of November 8, 1977 (91 Stat. 1266, 48 U.S.C. 1694c) is amended by inserting the words, "including the Supreme Court of the United States," between the words "courts of the United States" and "and".

Title IV

SEC. 401. With respect to cases and controversies which may have arisen or may arise in the Northern Mariana Islands against the Government of the Trust Territory of the Pacific Islands over which the District Court of the Northern Mariana Islands lacks jurisdiction, the High Court of the Trust Territory of the Pacific Islands shall have such jurisdiction as it possessed on January 8, 1978.

SEC. 402. Sections 335, 336 and 402(e) of the Act of November 6, 1978, 92 Stat. 2680, 2682, are repealed.

SEC. 403 (a) Any judge or former judge who is receiving payments pursuant to section 373 of title 28, United States Code may elect to become a senior judge of the court on which he served while on active duty.

(b) The Chief Judge of a Judicial Circuit may recall any such senior judge of his circuit, with the judge's consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the Chief Judge may specify.

(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation (in lieu of payments pursuant to section 373 of title 28, United States Code) and the same allowances for travel and other expenses as a judge in active service.

(e) Senior judges under subsection (a) of this section shall at all times be governed by the Code of judicial conduct for United States judges, approved by the Judicial Conference of the United States.

(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter --

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

(2) engages in the practice of law; or

(3) materially violates the Code of judicial conduct for United States judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section.

SEC. 404. The prosecution in a Territory or Commonwealth is authorized -- unless precluded by local law -- to seek review or other suitable relief in the appropriate local or federal appellate court, or, where applicable, in the Supreme Court of the United States from --

(a) a decision, judgment, or order of a trial court dismissing an indictment or information as to any or more counts, except that no review shall lie where the constitutional prohibition against double jeopardy would prohibit further prosecution;

(b) a decision or order of a trial court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the prosecution certifies to the trial court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

(c) an adverse decision, judgment, or order of an appellate court.

SEC. 405. This Act shall become effective on the first day of the third month following its enactment.

9/21/83

Territorial Courts Bill

Section-by-Section Analysis

Title I [1]

Section 101. This section amends § 3 of the Act, 48 U.S.C. § 1561, by authorizing the prosecution by indictment or by information of violations of the laws of the United States, of certain local offenses closely related to such violations, and of the Virgin Islands Territorial income tax. It is designed to face the problem presented by United States v. Christian, 660 F.2d 892 (3rd Cir. 1981), which held that existing law precludes the impanelling of a federal grand jury for the investigation of violations of federal laws in the Virgin Islands.

Section 102. This section amends § 21 of the Act, 48 U.S.C. § 1611, by authorizing the establishment of a local appellate court. It also authorizes the legislature of the Virgin Islands to vest in the local courts jurisdiction over all causes in the Virgin Islands over which the federal courts do not exercise exclusive jurisdiction. If the legislature exercises that power it must confer on the local courts exclusive jurisdiction, in the sense that the legislature cannot give the litigants an option whether to proceed in the local or in the federal courts. This jurisdiction of the local courts is, nevertheless, subject as a matter of federal law, to the concurrent jurisdiction of the district court provided for in § 22(a) and (c). The procedure in the local courts is to be governed by local law.

Section 103. Section 103(a) amends §§ 22 and 23 of the Act, 48 U.S.C. §§ 1612, 1613. Section 22(a) confers on the District Court of the Virgin Islands the full jurisdiction of a district court of the United States. In view of the decision in Chase Manhattan Bank (N.A.) v. South Acres Development Co., 434 U.S. 236 (1978), § 22(a) states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. § 1332. The revision of § 22(a) also takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by §§ 336(a) and 402(e) of the Bankruptcy Reform Act of 1978, 92 Stat. 2680, 2682, which conferred on the District Court of the Virgin Islands the jurisdiction of a bankruptcy court of the United States, effective April 1, 1984.

---

[1] In this title, the term "Act" refers to the Revised Organic Act of the Virgin Islands of 1954, 68 Stat. 497, 48 U.S.C. 1541 et seq.

Section 22(b) confers on the district court jurisdiction over those local causes over which jurisdiction is not vested by local law in the local courts. The local legislature would also have the power to divest the local courts of jurisdiction over local causes and to return it to the district court. In contrast to existing law (§ 24 of the Act) the district court will not have concurrent jurisdiction with the local courts over the causes vested in the latter by local law, except where specifically provided for by federal law, e.g. in diversity cases or in causes in which a federal question arises. Jurisdiction over petty causes, as defined in that subsection, is basically conferred on the local courts. The district court, however, will have jurisdiction over those petty causes over which it has jurisdiction under § 22(a), e.g., where they involve a federal question within the meaning of 28 U.S.C. § 1331.

Section 22(c) confers on the district court concurrent jurisdiction over offenses of which the local courts have jurisdiction, if those offenses are closely related to offenses over which the district court has jurisdiction. The purpose of this provision is to obviate the need for trying in different courts separate aspects of the same offense or of closely related offenses. This section is based in part on Rule 8(a) of the Federal Rules of Criminal Procedure.

Section 103(b) takes account of the loss of the district courts' present concurrent jurisdiction over local causes transferred by local law to the local courts, and continues the jurisdiction of the federal courts over the local causes pending in the federal trial and appellate courts on the effective date of this Act.

Section 104. This section replaces § 23 of the Act, 48 U.S.C. § 1613. It provides generally that the relations between the local courts of the Virgin Islands and the federal courts, including the Supreme Court of the United States, shall be the same as the relation between the state courts and the federal courts, with exception that for the first fifteen years following the establishment of the appellate court, all the decisions of the highest local court from which a decision may be had shall be reviewable in the United States Court of Appeals for the Third Circuit.

The transitional period of fifteen years is the same as the one provided for in § 4 of the Act of November 8, 1977, 48 U.S.C. § 1694c, relating to the Northern Mariana Islands. It is based on the consideration that, during the formative years of the new appellate court and while it establishes its institutional traditions, all decisions of that court should be reviewable as a matter of right.

After the expiration of the fifteen year period referred to in the proviso, the Supreme Court of the United States will have jurisdiction to review the decisions of the courts of the Virgin Islands in the same manner in which it reviews the decisions of the courts of the several states. See 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

Section 105. This section adds a new § 23A to the Act. It amplifies the last sentence of § 22 of the Act, 48 U.S.C. 1612, relating to the appellate jurisdiction of the district court over the decisions of the local courts. Section 23A provides that prior to the establishment of the appellate court authorized by § 21(a), the decisions of the local courts shall be reviewable in the appellate division of the district court, as provided by the local legislature. The latter, however, may not preclude appeals to the appellate division from decisions of the local courts involving federal questions.2/

2/ The pertinent proviso has been drafted (a) to obviate the contention that every act of the legislative or executive branch of a territorial government raises a federal question because all those acts derive their authority from federal law, in particular the Organic Act, and (b) to assure the reviewability in the appellate division of district court of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Organic

(Cont. on p. 4)

The appellate division consists of three judges, as on Guam and in the Northern Mariana Islands (see 48 U.S.C. §§ 1424 and 1694b, respectively). This provision responds to complaints made several years ago by representatives of the Virgin Islands that the decisions of the local courts are reviewed by a single district judge. Following the precedent of § 3 of the Act of November 8, 1977, 48 U.S.C. § 1694b, applicable to the Northern Mariana Islands, § 23A(b) provides that no more than one judge of a court established by local law may be a judge of the appellate division. This provision was included in the 1977 Act at the insistence of Members of Congress who apparently felt that it would be undesirable if a majority of the judges in the appellate division were members of the very court the decisions of which are reviewed.

The final decisions of the appellate division are reviewable in the Court of Appeals for the Third Circuit.

Section 106. This section deals with the substance of § 24(a) and (b) of the Act, 48 U.S.C. 1614(a) and (b), and the last two sentences of § 25 of the Act, 48 U.S.C. § 1615.

Section 106(a) amends § 24(a) of the Act by providing that the district judges shall be appointed for terms of ten years. Under existing law, the district judges of the territorial courts are appointed for terms of eight years. They become, however, eligible for retirement benefits only after ten years of service. 28 U.S.C. § 373. The purpose of this amendment is to avoid the hardship which 28 U.S.C. § 373 imposes on district judges who fail of reappointment after their first term. The redraft of § 24(a) incorporates by reference the amendment of 28 U.S.C. § 136(a), relating to the appointment of the chief judges of the district courts, by § 202 of the Federal Courts Improvement Act of April 2, 1982, 96 Stat. 52; it also would authorize the Chief Judge of the Third Judicial Circuit to assign to the district court a recalled senior district judge. See Sec. 403.

2/ (Cont.)
Act, and the acts of federal officials authorized by federal law. See in this context Taisacan v. Camacho, 660 F.2d 411, 413 (9th Cir. 1981) and Camacho v. Civil Service Commission, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Section 106(b) replaces § 24(b) of the Act. It expands the scope of the next to the last sentence of § 25 of the Act, 48 U.S.C. § 1615, by extending to the Virgin Islands "where appropriate" Part II of title 18, and title 28, United States Code, and the rules of procedures adopted or promulgated pursuant to titles 11, 18 and 28, United States Code. At present some of the statutory procedural provisions are expressly applicable to the Virgin Islands in a haphazard manner, leaving it open whether and to what extent other provisions also apply to the Virgin Islands.

Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to Northern Mariana Islands (48 U.S.C. § 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection and its counterparts applicable to Guam and the Northern Mariana Islands would have the effect of making the provisions of part II of title 18 and title 28 generally applicable to all territorial courts. It is intended that in the Virgin Islands the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to the Virgin Islands and those relating to judges who are appointed during good behavior.

The first proviso in § 24(b) is designed to provide that if the Attorney General of the Virgin Islands or his designee procecutes in the District Court of the Virgin Islands any cases arising under the Virgin Islands Territorial income tax pursuant to § 109, he shall have the status of a United States Attorney under the Federal Rules of Criminal Procedure.

The last two provisos of § 24(b) implement the amendment of § 3 of the Act by § 101 of this legislation. They provide (a) that federal offenses, local offenses coming within the scope of § 22(c), and offenses against the Virgin Islands Territorial income tax laws, may be prosecuted by indictment by grand jury or by information, and (b) that once a matter has been investigated by or presented to a grand jury it may be prosecuted by information only by leave of court or with the consent of the defendant.

Section 107. This section amends § 25 of the Act, 48 U.S.C. § 1615. It generally restates the first sentence of that section. The subject matter of the second sentence relating to the sessions of the court has been omitted since it is covered by 28 U.S.C. § 139, rendered applicable to the District Court of the Virgin Islands by § 24(b). The subject matter of the last two sentences has been transferred to § 24(b).

Section 108. This section amends § 27 of the Act, 48 U.S.C. § 1617, by substituting the words "courts established by local law" used in this legislation for the term "inferior courts of the Virgin Islands" used in the Act. It also repeals the last two sentences of § 27 because they duplicate 28 U.S.C. § 546, which has been made applicable to the Virgin Islands by the amendment of § 24(b) and by the first sentence of § 27.

Section 109. This section deals with various aspects of the internal revenue laws in effect in the Virgin Islands. It is based on the assumption that the present mirror income tax system will remain in effect in the Virgin Islands. Should that system be abolished or modified it may become necessary to change or delete this section.

Section 1(a) of the Act of July 12, 1921, as amended by Section 109(a), assimilates the phraseology of former Section 1 of the 1921 Act to the one used in Section 31(a) and (b) of the Organic Act of Guam, 48 U.S.C. § 1421i(a) and (b).

Section 1(b) of the Act of July 12, 1921, as added by Section 109(a), confers on the District Court of the Virgin Islands exclusive original jurisdiction over all civil and criminal proceedings in the Virgin Islands with respect to the Virgin Islands Territorial income tax with the exception of those arising under statutes ancillary to the income tax which have been enacted by the legislature of the Virgin Islands alone, and which do not mirror federal legislation. This provision which parallels Section 31(h)(1) of the Organic Act of Guam, 48 U.S.C. § 1421i(h)(1), is based on the consideration that the Virgin Islands territorial income Tax mirrors the Internal Revenue Code and that uniformity of interpretation requires that it be litigated only in the federal courts. This provision appears to be necessary in view of the characterization of the income tax laws of the

Virgin Islands as a local Territorial tax which is reviewable in the district court only by virtue of local legislation. Dudley v. Commissioner of Internal Revenue, 258 F.2d 182 (3rd Cir. 1958). Another reason for this provision is the factor that this bill would abolish the concurrent jurisdiction of the district court over causes based on local law, if local law has vested jurisdiction over them in the local courts. See Section 22(b).

Section 1(c) of the Act of July 12, 1921, as added by Section 109(a), provides that violations of the Virgin Islands Territorial income tax constitute offenses against the government of the Virgin Islands, which the appropriate officer of the Virgin Islands may prosecute in the district court without the request or consent of the United States Attorney normally required by Section 27 of the Act, 48 U.S.C. § 1617. This subsection is modelled on Section 31(f) of the Organic Act of Guam, 48 U.S.C. § 1421i(f).

Section 1(d) of the Act of July 12, 1921, as added by Section 109(a), confers on the district courts of the United States jurisdiction over civil actions to collect the Virgin Islands Territorial income tax. It is modelled on Section 31(h)(4) of the Organic Act of Guam, 48 U.S.C. § 1421i(h)(4). If such action for the collection of the Virgin Islands Territorial income tax is brought in a district other than the district of the Virgin Islands, the Attorney General may at the request of the Governor of the Virgin Islands represent the government of the Virgin Islands on such conditions as may be agreed upon. These conditions may provide for the reimbursement of the Department of Justice for services rendered and costs incurred. Such reimbursement is to be credited to the Department of Justice and not to be covered into miscellaneous receipts. Representation of the government of the Virgin Islands by the Attorney General of the United States is discretionary. The latter therefore may decline representation in those instances in which it would impose an excessive burden on the Department of Justice.

Section 109(b) is in the nature of a conforming amendment which incorporates into title 28, United States Code, the jurisdiction conferred on the district courts of the United States pursuant to Section 31(h)(4) of the Organic Act of Guam, 48 U.S.C. § 1421i(h)(4), and Section 1(d) of the Act of July 12, 1921, 48 U.S.C. § 1397(d), as added by Section 109(a) of this bill.

Section 110. This Section repeals the Act of May 20, 1932, 48 U.S.C. 1400, specifically conferring admiralty jurisdiction on the District Court of the Virgin Islands. This provision is no longer required in view of the amendment of § 22(a) of the Act, 48 U.S.C. § 1612(a), by § 103(a) of this legislation, which confers on the District Court for the Virgin Islands the full jurisdiction of a district court of the United States, including the admiralty jurisdiction under 28 U.S.C. § 1333.

Title II 3/

Section 201. This section restates and amplifies § 22 of the Act, 48 U.S.C. § 1424.

Section 22(a) restates the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a).

Section 22(b) deals with the first clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a). It confers on the district court of Guam the full jurisdiction of a district court of a United States. In view of the decision in Chase Manhattan Bank (N.A.) v. South Acres Development Co. 434 U.S. 236 (1978), the section states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. § 1332. The revision also takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by §§ 335(a) and 402(e)of the Bankruptcy Reform Act of 1978, which conferred on the district court of Guam the jurisdiction of a bankruptcy court of the United States, effective April 1, 1984.

Section 22(c) restates the second clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424. It adds that where the district court retains jurisdiction over local causes because they were not transferred by the legislature to the local courts, the district court shall be deemed to be a court established by the laws of Guam for the purposes of the requirements of indictment by grand jury or trial by jury.

3/ In this title the term "Act" refers to the Organic Act of Guam of 1950, 64 Stat. 384, 48 U.S.C. § 1421 et seq.

The local legislature would also have the power to divest the local courts of jurisdiction over local causes and to return it to the district court.

Section 22A(a) restates the part of the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a), which relates to the local courts. The section specifically authorizes the legislature of Guam to establish an appellate court, but only after the effective date of this Act. The subsection therefore will not have the effect of reviving the Supreme Court of Guam which was established in 1974 and struck down by the Supreme Court of the United States in Guam v. Olsen, 431 U.S. 195 (1977).

Section 22A(b) and (c) generally restate the last sentence of the first paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a), relating to the power of the legislature to determine the jurisdiction and procedure in the local courts of Guam. Section 22A(b) spells out (a) that the legislature of Guam does not have the power to vest in the local courts jurisdiction over causes over which the federal courts exercise exclusive jurisdiction and (b) that the jurisdiction of the local courts of Guam is subject to the concurrent jurisdiction of the District Court of Guam under § 22(b). Section 22A(c) provides that the procedure in the local courts shall be governed by the laws of Guam or by the rules of court.

Section 22B deals with the relations between the federal courts and local courts of Guam. It provides generally that the relations between the local courts of Guam and the federal courts, including the Supreme Court of the United States, shall be the same as the relation between the state courts and the federal courts, with exception that for the first fifteen years following the establishment of the appellate court, all the decisions of the highest local court from which a decision may be had shall be reviewable in the United States Court of Appeals for the Ninth Circuit.

The transitional period of fifteen years is the same as the one provided for in § 4 of the Act of November 8, 1977, 48 U.S.C. § 1694c, relating to the Northern Mariana Islands. It is based on the consideration that, during the formative years of the new appellate court and while it establishes its institutional traditions, all decisions of that court should be reviewable as a matter of right.

After the expiration of the fifteen year period referred to in the proviso, the Supreme Court of the United States will have jurisdiction to review the decisions of the courts of Guam in the same manner in which it reviews the decisions of the courts of the several states. See 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

Section 22C amplifies the second paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a), relating to the appellate jurisdiction of the district court. It provides that prior to the establishment of the appellate court authorized by § 22A(a), the decisions of the local courts shall be reviewable in the appellate division of the district court, as provided by the local legislature. The latter, however, may not preclude appeals to the appellate division from decisions of the local courts involving federal questions.4/

Sec. 22C(b) incorporates the precedent of § 3 of the Act of November 8, 1977, 48 U.S.C. § 1694b, applicable to the Northern Mariana Islands, by providing that no more than one judge of a local court of Guam may be a judge of the appellate division. This provision was included in the 1977 Act at the insistence of Members of Congress who apparently felt that it would be undesirable if a majority of the judges in the appellate division were members of the very court the decisions of which are reviewed.

The final decisions of the appellate division are reviewable in the Court of Appeals for the Ninth Circuit.

4/ The pertinent proviso has been drafted (a) to obviate the contention that every act of the legislative or executive branch of a territorial government raises a federal question because all those acts derive their authority from federal law, in particular the Organic Act, and (b) to assure the reviewability in the appellate division of the district court of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Organic Act, and the acts of federal officials authorized by federal law. See in this context Taisacan v. Camacho, 660 F.2d 411, 413 (9th Cir. 1981) and Camacho v. Civil Service Commission, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Section 22D is based on and expands § 22(b) of the Act, 48 U.S.C. § 1424(b), which now generally makes the Federal Rules of Procedure applicable to Guam. Section 22D will also extend to Guam "where appropriate" the procedural provisions of title 18 and title 28, United States Code. At present some of the statutory procedural provisions are expressly applicable to Guam in a haphazard manner, leaving it open whether and to what extent other provisions also apply to Guam.

Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to Northern Mariana Islands (48 U.S.C. § 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection and its counterparts applicable to the Virgin Islands and the Northern Mariana Islands would have the effect of making the provisions of part II of title 18 and title 28 generally applicable to all territorial courts. It is intended that on Guam the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to Guam and those relating to judges who are appointed during good behavior.

Section 22D omits the provisions of § 22(b) of the Act, 48 U.S.C. § 1424(b), relating to trial by jury and prosecution by information rather than by grand jury. Those provisions appear to have been superseded by § 10 of the Elected Governor Act of 1968, 48 U.S.C. § 1421b(u), which introduced into Guam the Fifth and Sixth Amendments to the Constitution of the United States without the reservation relating to grand juries contained in the corresponding provisions applicable to the Virgin Islands. Grand juries and petit juries therefore have been utilized in federal prosecutions on Guam for many years.

Section 202 amends § 24 of the Act, 48 U.S.C. 1424b, relating to the district judge and the officers of the District Court of Guam. Section 202(a) provides for the appointment of the district judge for a term of ten rather than eight years in order to provide for retirement benefits to district judges who fail of reappointment after their first term.

Section 202(b) is self explanatory.

Section 202(c) authorizes the Chief Judge of the Ninth Judicial Circuit to assign to the district court a recalled senior district judge. See Sec. 403.

Section 202(d) conforms § 24(b) of the Act, 48 U.S.C. 1424b(b), to the renumbering of the chapters of title 28, United States Code, in 1966.

Section 202(e) repeals § 24(c) of the Act, 48 U.S.C. 1424b(c), which has become redundant as the result of the general applicability to Guam of title 28, United States Code by virtue of § 22D.

Section 203. The reason for this repeal is given in the last two sentences of the explanation of § 22D.

Title III 5/

This Title amends the Act, which establishes the federal judicial system in, and its relationship to the local courts of, the Northern Mariana Islands in conformity with Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved on March 24, 1976, 90 Stat. 263 (Covenant), 48 U.S.C. § 1681, note.

Section 301(a) amends § 1(b)(1) of the Act, 48 U.S.C. § 1694(b)(1), by providing that the district judge shall be appointed for a term of ten rather than of eight years. The purpose of this amendment is to provide for retirement benefits to a district judge who fails of reappointment after his first term. Sec. 301(b) authorizes the Chief Judge of the Ninth Judicial Circuit to assign to the District Court of the Northern Mariana Islands a recalled senior district judge. See § 403.

Sec. 301(c) is based on and expands § 1(c) of the Act, which now generally makes the Federal Rules of Procedure applicable to the Northern Mariana Islands, unless otherwise provided in Articles IV and V of the Covenant. In addition to the existing law, § 301(c) will extend to the Northern

---

5/ In this title the term "Act" refers to the Act of November 8, 1977, 91 Stat. 1265, 48 U.S.C. §§ 1694 to 1694e.

Mariana Islands the Part II of title 18 and 28, United States Code, where "appropriate" and not inconsistent with Articles IV and V of the Covenant.

At present some of those statutory procedural provisions are expressly applicable to the Northern Mariana Islands in a haphazard manner, leaving it open whether and to what extent other provisions also apply to them. Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to Northern Mariana Islands (48 U.S.C. § 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection would have the effect of making the provisions of Part II of title 18 and title 28 generally applicable to the District Court for the Northern Mariana Islands. It is intended that the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to the Northern Mariana Islands, in particular Articles IV and V of the Covenant, and those relating to judges who are appointed during good behavior.

Section 302 amends § 2(a) of the Act, 48 U.S.C. § 1694(a), in four aspects. First, it adjusts the section to the recent amendment of 28 U.S.C. § 1331, pursuant to which the district courts have federal question jurisdiction without regard of the amount in controversy. Second, it provides that, effective April 1, 1984, the court will have the jurisdiction of a bankruptcy court of the United States, as have the district courts of Guam and of the Virgin Islands. Third, in view of the decision in Chase Manhattan Bank v. South Acres Development Co., 434 U.S. 236 (1978), the section states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. § 1332.

Fourth, it provides that the jurisdiction of the district court with respect to the government of the Trust Territory of the Pacific Islands shall extend only to actions brought by that government and, generally, to those actions against it which may be brought against a foreign government under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605, i.e. to those which are based on commercial activities carried on in the Northern Mariana Islands or on certain torts occurring there. In such actions the Trust Territory Government is entitled to such rights and privileges as are applicable to the United States where it is a party, e.g. venue, the statute of limitations, absence of a jury trial, and counterclaims. This provision has been prompted by the decision of the Appellate Division of the District Court for the Northern Mariana Islands in Sablan Construction Company v. Government of the Trust Territory of the Pacific Islands, 526 F.Supp. 135 (D. N.M.I. App. Div. 1981) in which the court assumed jurisdiction in a tax case involving the Trust Territory Government. The provisions of the bill to treat that government as a foreign government and not as an agency of the United States is based on a number of decisions which hold within a broad spectrum of issues, that the government of the Trust Territory is not an agency of the United States. See in this context in particular, People of Saipan v. United States, 502 F.2d 90, 95-96, 99-100 (9th Cir. 1974), cert. denied 420 U.S. 1003 (1975); Gale v. Andrew, 643 F.2d 826, 830, 832 (D.C. Cir. 1980); Porter v. United States, 204 Ct. Cl. 355, 364, 365, 496 F.2d 583, 589, 490 (Ct. Cl. 1976); RCA Global Communications Inc. v. U.S. Department of Interior, 432 F. Supp. 791, 794 (D. Guam 1977). The last two decisions indeed consider that government to be a foreign government. The interests of the people of the Northern Mariana Islands are sufficiently protected by giving the district court contract and tort jurisdiction over the Trust Territory Government and by the provisions of § 401. Above all, the preclusion of review by the district court of the governmental activities of the Trust Territory Government, is not likely to prejudice the citizens of the Northern Mariana Islands since that government has exercised few, if any, governmental functions with respect to those Islands since 1976. On the other hand, continued jurisdiction of the district court over the Trust Territory Government may result in suits being brought against it by residents of other Micronesian islands and adversely affect the detailed claims settlement procedures provided for in the Compact with the Micronesian entities.

The last sentence of Section 302 provides that a lack of the district court's jurisdiction over the Trust Territory Government cannot be circumvented by suits against the officers or employees of that government.

Section 303 deals with § 3 of the Act, 48 U.S.C. § 1694b, relating to the appellate jurisdiction of the district court for the Northern Mariana Islands.

First, § 303(a) establishes beyond any doubt that the appellate division of the District Court for the Northern Mariana Islands has jurisdiction only over the appeals from the decisions of the local courts of the Northern Mariana Islands and not over those of the district court. This clarification of the meaning of § 3 of the Act has been occasioned by the decision in *Sablan* v. *Santos*, 634 F.2d 1153 (9th Cir. 1980), which held that appeals from district court decisions in local law matters are to be taken to the appellate division of the district court rather than to the Court of Appeals for the Ninth Circuit. That decision is in conflict with § 402(c) of the Covenant with the Northern Mariana Islands (48 U.S.C. § 1681, note) on which § 3 of the Act is based. The explanation of § 402(c) in the Senate Report on the Covenant specifically states "the District Court will have such appellate jurisdiction over the decisions of the *local* courts of the Northern Mariana Islands as the laws of the Northern Mariana Islands provide" 6/ S. Rep. No. 433, 94th Cong. 1st Sess. 73 (1975) (emphasis added). Moreover, the appellate division of the District Court for the Northern Mariana Islands has been patterned on the appellate division of the District Court of Guam. *In re Webster*, 363 F.2d 837, 839 (9th Cir. 1966), held that the appellate division of the District Court of Guam "has no jurisdiction except to hear appeals from the Island Court of Guam [*i.e.* the local court] to the District Court of Guam." Subsequent decisions of the Court of Appeals for the Ninth Circuit, *Taisacan* v. *Camacho*, 660 F.2d 411, 413 (9th Cir. 1981), and *Camacho*, v. *Civil Service Commission*, 666 F.2d 1257, 1259-62 (9th Cir. 1982), point to the problems created by *Sablan* v. *Santos*, *supra*, viz., (a) the difficulty of determining whether a decision is based on local or federal law (666 F.2d at 1262); (b) whether an appeal to the Court of Appeals lies from a decision of the appellate division on matters of local law; and (c) whether a decision of the district court on matters of federal law can be appealed directly to the Court of Appeals. Hence, it appears imperative to clarify the point that all appeals from the

---

6/ The clause "such appellate jurisdiction as the laws of the Northern Mariana Islands provide" means, as do the corresponding provisions on Guam and in the Virgin Islands (48 U.S.C. §§ 1424(a) and 1612), that the laws of the Northern Mariana Islands may restrict the right of appeal, not that a local legislature can determine the court to which the decisions of a federal court may be appealed.

decisions of the trial division of the district court go directly to the Court of Appeals for the Ninth Circuit.

Second, § 303(a) provides, as do §§ 105, (§23A(a)) and 201, (§ 22c(a)), that the local legislature cannot preclude appeals to the appellate division of the district court from the decisions of the local courts which involve federal questions.7/

Sec. 304. This section amends § 4 of the Act which deals with the relationship between the courts established by the Constitution or laws of the United States and the local courts of the Northern Mariana Islands by especially referring to the Supreme Court of the United States. This amendment is designed to clarify that, after the expiration of the fifteen year period referred to in the proviso, the Supreme Court of the United States will have jurisdiction to review the decisions of the courts of the Northern Mariana Islands in the same manner in which it reviews the decisions of the courts of the several States. See 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

Title IV.

Section 401. This section is a correlative to Section 302. It provides in substance that with respect to claims against the Trust Territory Government arising in the Northern Mariana Islands over which the District Court for the Northern Mariana Islands lacks jurisdiction pursuant to Section 302, the High Court of the Trust Territory shall have such jurisdiction as it possessed on January 8, 1978, i.e., the day on which the constitution of the Northern Mariana Islands became effective.

7/ This provision has been drafted (a) to obviate the contention that every act of the legislative or executive branch of the government of the Northern Mariana Islands raises a federal question because virtually all those acts derive their authority from federal law, in particular the Covenant, and (b) to assure the reviewability in the Court of Appeals of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Covenant, and the acts of federal officials authorized by federal law. See in this context Taisacan v. Camacho, 660 F.2d 411, 413 (9th Cir. 1981) and Camacho v. Civil Service Commission, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Section 402. This section repeals §§ 335, 336 and 402(e) of the Bankruptcy Act of 1978, because they have been incorporated in §§ 103(a), and 201.

Section 403 provides for the recall to duty of certain territorial judges whose terms have expired. Judges of the of the United States, as defined in 28 U.S.C. § 451, retain their office after retirement pursuant to 28 U.S.C. § 371(b). Therefore they can be designated and assigned to perform active duty pursuant to 28 U.S.C. § 294. A territorial judge whose term has expired, however, ceases to be a judge. Hence, he cannot be recalled to active duty absent a statutory authorization.

Section 403 establishes, in analogy to 26 U.S.C. § 7447 (Tax Court) and 28 U.S.C. § 797 (United States Claims Court), a procedure pursuant to which a territorial judge who receives retirement pay under 28 U.S.C. § 373 may elect to become senior judge. Such senior judge may be recalled to duty by the Chief Judge of the Judicial Circuit in which the judge had served. The recall of a senior judge may obviate the need for assigning a judge from a distant district to a territorial court in the event of the temporary absence of the regular district judge or in order to designate an appellate division.

In order to protect the independence of the judiciary and to prevent conflicts of interest and other improprieties or the appearance thereof, a senior judge will remain subject to the requirements of the Code of Judicial Conduct of United States judges and be precluded from accepting civil office with the Government of the United States, or from practicing law. _Cf_. 26 U.S.C. § 7447(f).

Sec. 404. This section has been prompted by the decision in _People of the Territory of Guam_ v. _Okada_, 694 F.2d 565 (9th Cir. 1983) which held that the government of a territory may not appeal to a federal court in a criminal case from a ruling -- even that of an appellate court -- in the favor of the defendant, in the absence of a federal statutory authorization. Section 404 sets forth the circumstances in which such appeals are authorized. This section is based in part on 18 U.S.C. 3731.

Section 405. This section provides that the proposed legislation will become effective on the first day of the third month following its enactment. In view of the many changes in the jurisdiction of courts contained in this legislation, its effectiveness should be delayed by at least two months following its enactment.

Senator WEICKER. What assurance does this committee have that you will not select only one statute, say the land and water conservation fund, issue a proclamation on that single statute, and ignore the other statutes?

Mr. SHANKS. Mr. Chairman, I will call your attention to section 4 of our proposed bill, that section which contains the forcing mechanism.

Now if the President were to simply ignore other statutes, the effect would be the same as the effect on the section 109 of S. 1366, and the citizenship requirement in all the acts, all the provisions which were ignored, would automatically be made inapplicable to the citizens of the Northern Mariana Islands. It is in the President's and the administration's self-interest to act to issue a proclamation, and to conduct a review of the statutes to determine what the effect of eliminating the citizenship provision would be.

Senator WEICKER. You already have the authority to issue such a proclamation under section 1004 of the covenant. Rather than seeking legislative cover for a further delay, why did you not issue such a proclamation last year or last week or this morning to avoid the need for the hearing?

Mr. SHANKS. Mr. Chairman, I would take issue with the conclusion that we have that authority under section 1004. That provision says that the—let me quote it—"The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the trusteeship agreement * * *" And this is the test: "* * * if the President finds and declares that the application of such provision prior to termination would be inconsistent with the trusteeship agreement." That is the test, and it requires an individual finding.

That section has been exercised three times, I believe. There have been three proclamations, and in each case there has been a finding that a particular law would be inconsistent with the trusteeship agreement. I think that it would be impossible to make that finding with regard to some 300 statutes. I think it requires an individual determination and, as I understand the purpose of S. 1366, it is to secure the benefits of citizenship for the citizens of the Northern Mariana Islands during this interim period, and there is no indication that all of the statutes in the list of 300 or so are inconsistent with the trusteeship agreement.

Senator WEICKER. What specific statutes in the list cause you such concern that you want another 6 months to review them?

Mr. SHANKS. Mr. Chairman, that really points up, I think, the bind that the Department of Justice is in. We have problems with several of the statutes, but we simply lack the expertise, facing a list of some 300 provisions which are administered by many different agencies—we need lots of different kinds of expertise. I think we are just not in a position to be able to say what the practical effects will be of eliminating the citizenship requirement with respect to each of those 300 statutes, so I think the bind that we are in is that we can tell you which statutes the Department of Justice has some problems with, and in a couple of instances we have been made aware of problems that other agencies have with a particular statute, but we simply lack the expertise.

The forcing mechanism under our proposal essentially would start a clock ticking, and each agency would then, would have 6 months—or some portion of 6 months because the proclamation process takes some time—to review each statute and to come up with any objections or any problems that it perceives and make recommendations to the President.

Senator WEICKER. Secretary Montoya.

Mr. MONTOYA. Thank you, Mr. Shanks. I would like to introduce, if I may, Mr. Chairman, Frank Solomon, who is Acting Director of Technical Assistance in the Office of Territorial and International Affairs and who is an old sage in the territorial business. We are pleased to have him here. Then Larry Morgan who was up on the Hill until last year with Senator Schmitt, and is now Director of Legislative Affairs, and Steve Sander who is working in our Legislative Affairs Office.

Again, as you recommended to us, we will just highlight those portions with which we have a problem.

In S. 1367, we recommend minor modifications that are amply addressed just in the written testimony, so I would like to move right on to S. 589.

With regard to S. 589, the omnibus territories bill, section 1 of that bill would authorize $15.5 million in construction funds for Guam. The President's 1984 budget recommended $4,038,000 for the water and sewer component of the Tumon Bay project for fiscal year 1984. Your committee added $7.3 million for the road and drainage component of the Tumon Bay project, plus another $4.1 million to complete the Guam penitentiary.

As for the penitentiary, the executive branch agreed to construction funds in the amount of $6.5 million for fiscal year 1980. We do not support a new authorization or appropriation of funds for the penitentiary.

Section 2 would authorize direct appropriations for the Secretary of the Army for construction of hydroelectric facilities in Ponape Bay. We oppose section 2 unless language is added requiring approval of such a project by the Secretary of the Interior.

It is important to note now that at a time when Congress looks to Interior to provide a well coordinated and well planned approach to development of the territories, we need to have as much coordinating authority as possible to do an efficient and effective job for the territories.

Section 3 would prohibit the Northern Mariana Islands from rebating income taxes effective January 1, 1985. The administration is working with the Government of the Northern Mariana Islands to revise the current Federal/Northern Mariana Islands income tax relationship and to address the current problems. We will submit legislation to Congress in the near future. We anticipate by the end of this year.

With regard to section 3(c) and its reporting requirement, we have not completed our review and are unable to comment at this time.

The Department of the Interior supports with a small modification subsection (b) of section 4 which would increase the Virgin Islands loan guarantee program for water and power construction by $40 million. We believe that the water and power problems of the

Virgin Islands are sufficiently severe that construction should begin immediately and be completed within the next 3 years.

We, therefore, suggest that section 4(b) which refers to 1990 be changed to 1986.

Subsection (a) of section 5 would delete the loyalty oath contained in the Virgin Islands Organic Act. We would recommend an extension of article VI of the Constitution to the Virgin Islands. It would provide state-like treatment for the Virgin Islands.

In regard to the portion dealing with Guam reapportionment, the drafters of the 1966 amendments to the Organic Act sought to limit the amount of time legislatures would devote to revamping election laws. We believe that legislative attention must remain focused on substantive issues and that the alteration of the election laws every 10 years is sufficient to allow a properly constituted legislature that will meet constitutional tests.

We are strongly opposed to the enactment of subsection (c) of section 5 which would eliminate the requirement that the President or his representative approve expenditures from the Virgin Islands' matching fund. The amendment in subsection (c) would reduce financial accountability and this is something that Congress, as well as the administration, is striving to continue to improve.

We are opposed to enactment of section 6.

With respect to section 8 we are in support of the specialized health care for the Marshall Islands. However, we note that the compact of Free Association which was recently approved by the people of the Marshall Islands by 57.9 percent of those voting includes funding for a health program similar to that contained in section 106. Accordingly, we strongly oppose section 8 of the bill because the people of the Marshall Islands have already chosen to support the alternative health provisions contained in the Compact of Free Association. We recommend that the issue be considered in the context of the compact when the compact is presented to the Congress for approval.

We reaffirm our support for the selective exemption for Guam and the other territories from the Clean Air Act requirements. Meeting those requirements would be costly, and would be especially onerous in light of the fact that Guam's already clean air would not be improved. A number of members of this committee are aware that the Environmental Protection Agency last year suggested language in the hearing before this committee that would provide a mechanism for granting exemption, on a case-by-case basis, from the Clean Air Act in the territories if the exemptions are deemed necessary and if national ambient air quality standards and any applicable emission standards for hazardous air pollutants are met and maintained.

We do request, however, that the Virgin Islands be added to the list of territories as originally suggested by the Environmental Protection Agency. This would allow uniform treatment of the territories under this legislation.

We urge your positive action in light of the fact that the Department of Justice recently renewed its request in the Federal District Court for Guam that the Guam Power Authority comply with the Clean Air Act.

Senator WEICKER. I have one question here, and then I will turn the questions over to my good friend, Senator Matsunaga.

I've just finished with the Marianas on the matter of citizenship. Now residents of American Samoa are U.S. nationals, not citizens, so do we have a similar problem with Samoa where the Federal programs have been extended to assist the population, but because of a citizenship requirement, strictly interpreted, residents may not be able to participate?

Mr. MONTOYA. I am not aware of any, Mr. Chairman, and it is important to note that the status of U.S. nationals was requested by the American Samoans themselves because there was a concern about land alienation. We would be more than happy to further research that question and get back to you.

Senator WEICKER. I would appreciate that. Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman. According to your testimony, the administration is opposing section 8 of the House amendments to S. 589 which would make the Department of the Interior implement a health care plan for the Marshall Islanders who were exposed to radiation from our atomic testing in the 1950's. I gather that the reasoning for your opposition is that the Congress has not appropriated the funds for the program.

However, is it not correct that the administration did not in the first instance submit a budget request to fund this program in fiscal year 1984?

Mr. MONTOYA. That is correct. We didn't submit it. It is important to note, however, that the compact, on which we have been working for the past 14 years, includes $30 million to provide health care for the nuclear-affected people of the Marshall Islands. Again, this compact was approved by 57.9 percent of the people in the Marshall Islands, and we feel that this addresses that need, Senator.

Senator MATSUNAGA. But you did not submit it in your 1983 budget either; did you?

Mr. MONTOYA. No; we didn't.

Senator MATSUNAGA. It seems, therefore, that your failure to send up a budget request is a key factor in why the program has not been funded by Congress. Now do I understand your position to be that if the Congress had funded or will fund the program, you will support it?

Mr. MONTOYA. I hope I am not skirting your question, but I just feel that we have gone so far, and with this Compact of Free Association and again have taken a lot of time in studying this Marshall Islands health care issue that we just need to support the compact provision.

Senator MATSUNAGA. Is it not true that when the compact is submitted to the Congress it will still take time for ratification?

Mr. MONTOYA. Yes, it will.

Senator MATSUNAGA. And during that interim period unless we have funded a program, would not the health care aspects of the islanders be completely neglected?

Mr. MONTOYA. The Department of Energy at this time does provide health care for the nuclear affected people of the Marshall Islands. When I was in Majuro we saw quite an investment of our dollars in improving that health care facility there; that is, the hospital that is being built in Majuro, so it is not like health care is going unregarded in the Marshalls. We believe that it is being adequately addressed at this point through the joint effort of our construction of the new hospital, the ongoing hospital facility there, and the services that are being provided by the Department of Energy.

We had a briefing from the Department of Energy on their specific health care program that is taking place in the Marshalls by Ms. Chris Morris who is here today. It might be appropriate, if we wish to pursue this question, to invite Ms. Morris to address what the Department of Energy is doing in that regard, Senator.

Senator MATSUNAGA. Well, the basis of my concern is this that we went out there, did our nuclear testing, and we know that the health not only of those who are presently living there, but the future, the children may be affected because of the parents or the soil having been affected by nuclear weapons. Since we are so informed, we should provide full health care of these islanders. It is only fair, and I want a commitment from the administration that they will somehow carry on a health care program, whether it be on the basis of the compact or whether it be by direct appropriation through the Interior Department, whatever it is, but I would like to see a commitment on the part of the administration to a health care program.

Mr. MONTOYA. We share in your concern, but there seems to be an inference that health care isn't being addressed at this time by the administration. We believe that it is, and it will continue to be, and again for long-term planning, we believe that the correct approach will be passage of the Compact of Free Association.

Senator MATSUNAGA. Then in your view, there is an adequate health care plan and you do intend to carry that out?

Mr. MONTOYA. Yes.

Senator MATSUNAGA. Thank you, Mr. Chairman.

Senator WEICKER. Senator McClure?

The CHAIRMAN. Mr. Chairman, I have no questions at this time. Thank you very much.

Senator WEICKER. Just two more questions—will you assure the committee you will keep us informed of progress and notify us prior to submission? I am referring to the Marianas' tax.

Mr. MONTOYA. Yes, sir, I will.

Senator WEICKER. And you plan to consult with the other territories about your efforts in the Marianas?

Mr. MONTOYA. One of the things that we have started and will continue to do is to continually work with the territorial representatives here in Washington as well as making frequent trips to the territories to maintain a system of communications between us and to share issues that are of mutual concern to both the administration and the territories. So quite definitely, yes.

Senator WEICKER. Since next year is an election year, do you have any concern that even if legislation is submitted Congress may not have sufficient time to consider it prior to the January 1, 1985, deferral date of section 601?

Mr. MONTOYA. I am not the best one to comment on the timing of Congress. We do have concerns, but we feel that we will have sufficient time to address the issue.

Additionally, we see this as part of our advocacy role in working closely with this body and with the other members of the administration to try to expedite matters that affect the territories.

Senator **WEICKER**. The Senate fiscal year 1984 appropriations report contains a requirement for a study of how best to meet the Virgin Islands' water and power needs, by grants, direct loans, or guarantees.

Will you submit a copy of your study to this committee as well as Appropriations?

Mr. **MONTOYA**. Yes, sir.

Senator **WEICKER**. Doesn't the use of direct loans provide greater control and flexibility in the event of fiscal difficulties than guarantees?

Mr. **MONTOYA**. No. Either vehicle provides an opportunity to build in adequate controls and flexibility to monitor the loan.

The key to success is a reasonable project that is well planned and well thought out. One of the problems that we have had in the past was that we had a knee-jerk reaction to a lot of these problems rather than thinking what the short-term need, as well as the medium- and long-term needs, would be for a given problem, specifically water and power.

Senator **WEICKER**. I have no further questions of these witnesses. Senator McClure?

The **CHAIRMAN**. Mr. Chairman, I have one question of Mr. Shanks.

On page 5 of your statement, Mr. Shanks, with reference to provisions of the statute you indicate first that you wish to have the opportunity for the President of the United States to issue a proclamation rather than deal with the substance of the matter in statute, if I understand the thrust of your testimony. Is that correct?

Mr. **SHANKS**. That is correct, Senator McClure.

The **CHAIRMAN**. So you are dealing not with the substance but a matter of procedure, am I correct?

Mr. **SHANKS**. Well, I think what we are trying to do is set up a mechanism that will allow each affected agency to study the problem and advise the President with respect to the practical difficulties that it foresees from eliminating the citizenship requirement in the statutes that the agency administers.

The **CHAIRMAN**. You mean you are bidding for time to find out what the reaction is?

Mr. **SHANKS**. I think what we are trying to do is start a clock ticking. I am aware that the report of the Study Commission has been around for some time, and I am aware that the Department of Justice undertook a year ago to try to come up with a bill which would accomplish the objectives of S. 2088 while, at the same time obviating our objection to eliminating the citizenship requirement on a wholesale basis for over 300 statutes.

The **CHAIRMAN**. Let me read from the hearing record before this committee on September 13, 1982. I stress 1982. I asked, "Is there a substantive objection to any of the particular statutes enumerated in S. 2088?" Similar legislation to that which we have before us now—page 364 of the hearing record; Mr. Simms responded, "Mr. Chairman, let me take that one. I believe the answer to that is no. At this time I think the problem we have is more of a procedural problem, and I believe that we would like to work with the committee in the next few days."

In the next few days—that was September 12, 1982, and now you are telling us that you want 6 months more to think about it?

Mr. SHANKS. Well, let me say two things about that. First, the Department of Justice did submit a bill which was substantially similar to the one which you now have in front of you as an alternative to the Office of Management and Budget for the clearance process and for certification to the other agencies, and that happened last fall, and so I think it is not a situation in which we simply did nothing.

On the other hand, it has taken a great deal of time, I admit. I have to be very candid. It has taken a very long time to get clearance for that, but what you have in front of you is basically what we prepared last fall in response to Mr. Simms' commitment.

The CHAIRMAN. I appreciate your statement, and that is exactly as I understand it. The problem is in OMB. I appreciate your saying that. That is more candid than we often get up here. There is a problem in OMB. I expect you will hear from OMB now.

Mr. SHANKS. I will probably get a phone call this afternoon. But let me also say, though, that as I understand Mr. Simms' comment, the problem we have is a procedural one in that we think that it is not the best way to proceed to simply remove the citizenship requirement from such a large list of statutes, and I think our objection comes from the fact that we simply lack the authority and the expertise with respect to so many different statutes to determine what the practical effect is going to be. So the bill which we have proposed would essentially allow each of the affected agencies to make that determination and make recommendations to the President, but it contains a forcing mechanism which would accomplish what the Department of Justice is not able by itself to accomplish.

The CHAIRMAN. Do you know if several agencies have been asked to provide that information?

Mr. SHANKS. I believe we have talked to several agencies and perhaps Mr. Marcuse can elaborate on this, and we have at least with respect to a couple of agencies, we do have some idea of what their problems are.

The CHAIRMAN. Has OMB requested information from the agencies?

Mr. SHANKS. They may have. If so, it was very recent. Let me see if Mr. Marcuse knows the answer to that.

Mr. MARCUSE. I really don't know, sir.

The CHAIRMAN. It seems to me that we are going to have to have more than annual hearings if every year we get hit with the request to leave it until next year, which is basically what you are suggesting.

Mr. SHANKS. Mr. Chairman, I think if the substitute bill which we propose were adopted, we wouldn't need another hearing. We would have results one way or another within 6 months.

The CHAIRMAN. I think, Mr. Chairman, that perhaps we should follow up with the agencies and ask them to comment on this because I think the concern is justified. We ought to know if indeed there is information available, but apparently we are not getting it in this fashion. Maybe we could get it by direct inquiry to the agencies.

Mr. Shanks. That might be the best way to proceed.

The Chairman. One other question if I might, Mr. Chairman—there was an article in the Washington Post on October 3 that indicates that the Environmental Protection Agency has decided to give dozens of States or counties that failed to meet Federal clean air standards by January 1 a stay of execution before imposing costly penalties in the Clean Air Act.

I don't know whether that article is a correct reflection of EPA policy, but if it is, why is our Government then bringing suit against the Guam Power Authority?

Mr. Montoya. For me?

The Chairman. Yes, sir.

Mr. Montoya. That's what I would like to know.

The Chairman. Maybe we can try to help you find out.

Mr. Montoya. We are in support of the exemption. The only change we recommend would be to add the Virgin Islands.

The Chairman. Have you suggested that lawsuit be dropped?

Mr. Montoya. We have continually suggested that.

The Chairman. Maybe we can help you on that, too. Thank you, Mr. Chairman.

Senator Matsunaga. One question, Mr. Chairman—Mr. Montoya, you indicated that the Interior Department defers to the Department of Agriculture on section 14 to exempt insular areas from the milk assessment fee of 50 cents.

I suppose that because of your varied activities you would be closer to life in the islands. What is your view? Would you favor the elimination? And if so, why? If not, why?

Mr. Montoya. Frankly, Senator, this one was added just recently, and I really need to take a good, close, hard look at it.

Senator Matsunaga. Not 6 months?

Mr. Montoya. Pardon?

Senator Matsunaga. Another 6 months? No?

Mr. Montoya. We will respond rapidly.

Senator Matsunaga. Well, we know for a fact that it is affecting Puerto Rico and Hawaii adversely, perhaps the Virgin Islands, too.

Puerto Rican representatives have already approached me and asked me to do something about doing away with the assessment.

Could you, after you make a study, submit a response in writing for the record?

Mr. Montoya. Yes, sir.

Senator Matsunaga. And Mr. Chairman, I ask unanimous consent that I may have my opening statement included in the record, and the statement of Congressman Daniel K. Akaka of Hawaii be included in the record following my statement.

Senator Weicker. So ordered.

[The prepared statements of Senator Matsunaga and Mr. Akaka follow:]

STATEMENT BY THE HONORABLE SPARK M. MATSUNAGA
A SENATOR FROM HAWAII
DURING A HEARING OF THE SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE CONCERNING VARIOUS TERRITORIAL LEGISLATION

Thursday, October 6, 1983

Thank you very much, Mr. Chairman.

In the interest of time, Mr. Chairman, I just want to say briefly that I am generally supportive of the thrust of the territorial legislation on which we are hearing testimony today. I am particularly interested in the amendments proposed by the House of Representatives to S. 589, the Guam Capital Improvements measure reported by the full Energy and Natural Resources Committee and passed by the Senate earlier this year. As you know, the House amendments address a number of major concerns of the territories and many were, in fact, requests made of the Congress by the individual territorial governments.

There is one House amendment which affects all the U.S. insular areas, including my State of Hawaii, upon which I would like to make a few comments for the record. But before that, Mr. Chairman, I would like to highlight two other House amendments which I strongly support.

First, Section 7 of the House amendment would authorize the Department of Energy (DOE) to fund the indigenous, renewable energy projects recommended in the Territorial Energy Assessment Report of December, 1982. This assessment of the feasibility of the use of renewable energy resources in the U.S. territories was the final product of the Energy Committee hearings which I chaired in Hawaii in 1980 which explored the Pacific Island energy crisis. I am pleased that the House has taken this first step in implementing the findings of the Territorial Energy Assessment. I think we can go even further with respect to the use of renewables in the U.S. insular areas and I plan to explore this with you, Mr. Chairman, with Chairman McClure and with the Departments of Energy and Interior. There may, perhaps, be a need for a follow-up hearing on the Territorial Energy Assessment in order to obtain the views of the island governments on what has been done and what can be done in this area.

Second, I want to emphasize my support for Section 8 of the House amendment which directs the Secretary of the Interior to implement the health care program authorized for the atolls exposed

TO NUCLEAR RADIATION DURING U.S. WEAPONS TESTING DURING THE 1950'S. IN MY JUDGMENT, THE FEDERAL GOVERNMENT HAS NOT FULFILLED ITS SOLEMN RESPONSIBILITY TO CARE FOR THE INNOCENT PEOPLE OF THESE ATOLLS WHO WERE AFFECTED BY OUR ACTIONS. ONE OF THE THINGS THAT WE MUST DO IS TO GUARANTEE THEM FULL AND PROPER HEALTH CARE INDEFINITELY AND AT NO COST. THE CONGRESS HAS PREVIOUSLY AUTHORIZED SUCH A HEALTH CARE PROGRAM, BUT IT HAS NOT BEEN IMPLEMENTED. THIS HOUSE AMENDMENT DIRECTS THE SECRETARY OF THE INTERIOR TO DO JUST THAT. I AM HOPEFUL THAT THIS COMMITTEE AND THE FULL SENATE WILL SUPPORT THIS AMENDMENT.

MR. CHAIRMAN, SECTION 14 OF THE HOUSE AMENDMENT WOULD EXEMPT THE U.S. INSULAR AREAS, INCLUDING MY STATE OF HAWAII, FROM INCLUSION UNDER THE MILK PRICE SUPPORT ASSESSMENT PROGRAM WHICH WAS ESTABLISHED UNDER THE AGRICULTURE PORTION OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1982. I STRONGLY SUPPORT THE ENACTMENT OF THIS HOUSE AMENDMENT AND WOULD LIKE, AT THIS TIME, TO PLACE INTO THE HEARING RECORD AT THE APPROPRIATE PLACE A STATEMENT BY MY DISTINGUISHED COLLEAGUE FROM HAWAII, CONGRESSMAN DANIEL AKAKA, WHICH DISCUSSES THE NEED FOR THE PROPOSED INSULAR AREA EXEMPTION.

AS CONGRESSMAN AKAKA INDICATES IN HIS STATEMENT, THE ENACTMENT

LAST YEAR OF THE LEGISLATION ESTABLISHING THE NEW ASSESSMENT PROGRAM TO OFFSET A PORTION OF THE FEDERAL GOVERNMENT'S MILK PRICE SUPPORT COSTS HAD AN UNINTENDED EFFECT -- IT INCLUDED THE NON-CONTIGUOUS AREAS OF THE UNITED STATES. I MIGHT EMPHASIZE FOR THE RECORD THAT THIS ASSESSMENT WAS NOT IN EITHER OF THE TWO ORIGINAL RECONCILIATION BILLS FROM THE HOUSE AND SENATE. THE ASSESSMENT PROVISION WHICH INCLUDED THE NON-CONTIGUOUS AREAS WAS DEVELOPED IN THE HOUSE-SENATE CONFERENCE COMMITTEE AS A COMPROMISE. WE STRONGLY BELIEVE THAT ITS IMPACT ON THE NON-CONTIGUOUS AREAS AND THEIR DAIRY MARKETS WAS NOT CONSIDERED OR ANTICIPATED.

THE 50 CENT PER HUNDREDWEIGHT ASSESSMENT IS NOW BEING APPLIED TO ALL THE U.S. INSULAR AREAS--HAWAII, PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA--WHICH IN EACH CASE HAVE RELATIVELY SMALL, SEPARATE AND SELF-CONTAINED DAIRY MARKETS WHICH ARE NOT PART OF THE NATIONAL DAIRY MARKET. THE ASSESSMENT WILL UNDOUBTEDLY HAVE A DELETERIOUS EFFECT ON AND PLACE AN UNDUE BURDEN ON THESE ISLAND DAIRY INDUSTRIES AND WILL BE DISCRIMINATORY TO ISLAND RESIDENTS WHO ALREADY PAY FAR MORE FOR FRESH MILK THAN DO MAINLANDERS.

In the case of Hawaii and Puerto Rico, Mr. Chairman, the dairy markets in these insular areas are wholly separate and distinct and bear no relationship to the U.S. mainland milk market. Costs of production in Hawaii and Puerto Rico are considerably higher than those of any mainland states. Hawaii's cost of production last year was $21.06 per hundredweight compared to the federal price support figure of $13.01 cents per hundredweight. Congressman Akaka points out in his statement that this means that in Hawaii the cost of milk production is 60 percent higher than the rate of the federal price support.

Puerto Rico, as Congressman Corrada can confirm, is in an even worse situation than Hawaii in terms of the cost of milk production. It is my understanding that Puerto Rico's cost of production last year reached $23.27 per hundredweight, again compared to the $13.00 federal price support figure. I believe this works out to about an 80 percent difference in the cost of production for Puerto Rico.

And it should be recognized, Mr. Chairman, that this translates into high costs for milk consumers in the insular areas. In Hawaii, for example, consumers are paying an average of 98 cents per quart

WHILE THEIR COUNTERPARTS ON THE MAINLAND ARE PAYING ON THE AVERAGE OF ONLY 60 CENTS PER QUART OF MILK. THIS FACT ALONE SHOULD MAKE THE CASE FOR THE EXEMPTION OF THE INSULAR AREAS FROM THE ASSESSMENT PROGRAM.

MR. CHAIRMAN, THE FACT OF THE MATTER IS THAT THE FEDERAL DAIRY PROGRAM HAS NOT, OVER THE YEARS, BEEN ABLE TO HAVE ANY EFFECT ON THE DAIRY MARKETS OF HAWAII, PUERTO RICO, AND THE OTHER INSULAR AREAS. IT IS IMPORTANT TO NOTE THAT BECAUSE OF THE INABILITY OF THE FEDERAL MILK PROGRAM TO HAVE ANY IMPACT ON ISLAND PRODUCTION OF MILK, THE GOVERNMENTS OF BOTH HAWAII AND PUERTO RICO ENACTED STRICT CONTROLS OVER ISLAND DAIRY INDUSTRIES. THE HAWAII MILK CONTROL ACT, FOR INSTANCE, PROVIDES FOR A QUOTA SYSTEM BASED ON CONSUMER DEMAND AND IS SET AT A LEVEL THAT PREVENTS VIRTUALLY ANY SURPLUS PRODUCTION. THE RESULT OF THE HAWAII MILK CONTROL ACT IS THAT SUPPLY MEETS DEMAND IN OUR STATE. WE CONTRIBUTE NO SURPLUS MILK TO THE NATIONAL MARKET.

FURTHERMORE, OUR DAIRY INDUSTRY PRODUCES ONLY FRESH MILK. WE HAVE NO FACILITIES TO PROCESS MILK FOR CHEESE, BUTTER OR NON-FAT DRY MILK, THE FORMS IN WHICH EXCESS PRODUCTION CAN BE STORED.

IN VIEW OF THESE CIRCUMSTANCES--AND I BELIEVE THEY APPLY TO THE OTHER INSULAR AREAS AS WELL--WE CANNOT POSSIBLY CONTRIBUTE TO THE DAIRY PRODUCTION SURPLUS PROBLEM THAT WE FACE NATIONALLY AND THAT THE CONGRESS WAS TRYING TO ADDRESS WITH THE ENACTMENT OF THE 50 CENT PER HUNDREDWEIGHT ASSESSMENT.

MR. CHAIRMAN, THE U.S. INSULAR AREAS NEED THIS EXEMPTION FROM THE ASSESSMENT PROGRAM THAT IS CONTAINED IN THE HOUSE-PASSED AMENDMENTS THAT ARE BEFORE US TODAY. THE DAIRY INDUSTRIES OF THE INSULAR AREAS ARE SEPARATE AND DISTINCT MARKETS THAT DO NOT PARTICIPATE IN OR BENEFIT FROM THE FEDERAL MILK PRICE SUPPORT PROGRAM, AND THAT DO NOT CONTRIBUTE TO THE MILK SURPLUS ON THE MAINLAND.

THE 50 CENTS PER HUNDREDWEIGHT ASSESSMENT HAS PLACED A HEAVY BURDEN ON OUR MILK PRODUCERS WHO RECEIVE NO BENEFIT FROM THE FEDERAL MILK PRICE SUPPORTS AND WILL HAVE A DETRIMENTAL EFFECT ON ISLAND MILK PRICES AND ISLAND CONSUMERS WHO ALREADY PAY THE HIGHEST PRICES FOR MILK IN THE NATION.

LET ME CONCLUDE, MR. CHAIRMAN, BY POINTING OUT THAT THE HOUSE AGRICULTURE COMMITTEE HAS SEEN THE WISDOM IN THE EXEMPTION OF THE insular areas and has included such a provision in H.R. 1875, the Dairy Production Stabilization Act of 1983 which has been reported favorably to the House floor. The House Committee has endorsed the language contained in Section 14 of the House amendments to S. 589. I am hopeful, Mr. Chairman, that the Senate Agriculture Committee will similarly not raise any objection to the insular area exemption. The inclusion of the State of Hawaii under the definition of insular area may cause some concern, but I am hopeful that any problem in this regard can be worked out with the Agriculture Committee prior to going to the floor on the House amendments.

Thank you, Mr. Chairman, for allowing me to take this time.

# # #

Statement of the Honorable Daniel K. Akaka

Before the Senate Subcommittee on Energy Conservation and Supply

October 6, 1983

I appreciate the opportunity to testify before the Senate Subcommittee on Energy Conservation and Supply. At the outset, I would like to express deep appreciation for the contribution that my colleague from the State of Hawaii, Senator Matsunaga, has made in matters relating to this Subcommittee's jurisdiction. I know you value his leadership as much here in the Senate as we do in Hawaii.

This morning the Subcommittee is holding hearings on the House amendments to S. 589. This bill is very important to the insular areas of the U.S. I urge the Senate to join the House in supporting this measure.

I know of no opposition to this legislation. S. 589 was introduced at the request of the Administration. It was revised slightly by the Senate and received swift consideration. Earlier this week, the bill was considered on the floor of the House. The bill which comes to you today has the support of a bipartisan coalition in the House Interior and Insular Affairs and was passed in the House without opposition.

S. 589 contains many provisions which are of great importance to citizens living in our insular areas throughout the Pacific and the Caribbean. Among other things, it provides for certain capital improvement projects. These projects are essential to their continued economic development. In the House, we feel that the nation's insular areas are a unique responsibility. For this reason, we acted on this legislation without hesitation. I am sure that your feelings here in the Senate are the same, and that you will likewise give this bill early and favorable consideration.

Of special significance in this legislation is a provision which would exempt insular areas of the United States from their unintended inclusion under section 101 of the Agricultural Reconciliation Act of 1982. I firmly believe that this exemption is justified, and, in fact, long overdue. These dairy assessments have imposed an unreasonable burden on off-shore areas.

Dairy assessments were included in the Agricultural Reconciliation Act of 1982 because many dairy farmers were simply producing too much milk. Under the terms of the current dairy program, this surplus production has become costly for the federal government. While these assessments may make sense for the continental United States, for places like Hawaii and other insular areas they are irrelevant, and may well put our dairy farmers right out of business.

The current assessment under the dairy program is the result of a compromise that was approved in conference. The compromise position providing for assessments on each hundredweight of milk produced bears no relationship to the version of the bill that passed the House and Senate. Had something similar to the House or Senate position been adopted, the insular areas would not have been treated in this discriminatory manner. For the first time, insular areas of the U.S. have had to contend with a program that offers them no benefit, but causes considerable burden for their consumers and dairy farmers.

As I'm sure you know, Hawaii is located in the middle of the Pacific Ocean, some 2,700 miles from the continental United States. Other offshore areas are even further from mainland supplies and ports. The problems of supply and demand in our insular areas are not the same as those faced routinely by cities and states on the mainland. The nature of the dairy system in the insular areas of our nation is simply unique.

Dairy farming in Hawaii bears little resemblance to dairy farming on the mainland. The dairy industry in Hawaii runs a fresh milk only operation. We have no facilities to process milk for cheese, butter or non-fat dry milk. Thus, there is no way in the world that a dairy farmer in Hawaii could contribute to the nation's growing surplus of cheese, butter or dry milk products. If Hawaii cannot possibly contribute to the dairy surplus problem, then Hawaii certainly should not be forced to pay the penalty for creating such a surplus.

Not only are we in Hawaii unable to produce cheese, butter or dry milk products due to a lack of facilities, but we are also prevented from generating any surplus production by state regulations. Under the terms of the Fresh Milk Control Act, a rigid system of control and production has been instituted in Hawaii. This results in a level of production sufficient to satisfy demand within the state, while at the same time preventing any surplus production from occurring. The end result of this regulation is that production meets demand in Hawaii; no surplus is generated for use in Hawaii or in any other state.

To force insular areas which do not contribute to the problem of surplus dairy products to pay an additional cost of production is simply unfair. Not only do we not contribute to the source of the problem, but insular areas don't even benefit from federal price supports. In Hawaii, for example, the cost of production is 21.09 cents per hundredweight. In Puerto Rico, cost of production is 23.25 per hundredweight. The cost of production in Guam, American Samoa and the Virgin Islands is equally as high. A federal price support of 13.10 cents per hundredweight means that in Hawaii, the cost of production is 60 percent greater than the federal price support. This translates into an average the cost to the consumer of 98 cents per quart Hawaii compared to an average of 66 cents a quart on the mainland.

It is clear that off-shore the market for milk in insular areas is separate and independent from the mainland dairy market. Furthermore, insular areas neither add to the current surplus nor benefit from the national program of price supports. Because of these special circumstances, it is quite clear that all off-shore areas deserve the exemption from the dairy assessment which they are granted under the terms of this legislation.

Senator WEICKER. Gentlemen, thank you very much.

Mr. SHANKS. Thank you, Mr. Chairman.

Senator WEICKER. The next witness is Judge Paul Abbate, the presiding judge of the Superior Court of Guam, Judge Abbate and Mr. B. J. Cruz, Director of the Washington Liaison Office, Office of the Governor of Guam, accompanied by Mr. Joaquin Perez, general manager of the Guam Power Authority, and Mr. Herman Sablan, administrator of the Guam Environmental Protection Agency.

Judge Abbate?

Judge ABBATE. Good morning, Senators. It's a real pleasure to be here, and it's nice to get away from Guam and visit Washington.

Senator WEICKER. Everybody in Washington wishes they were going to Guam, so we are delighted.

STATEMENT OF HON. PAUL J. ABBATE, PRESIDING JUDGE, SUPERIOR COURT OF GUAM

Judge ABBATE. Senator, my remarks will be very brief. My name is Paul A. Abbate, for the record. I am presiding judge of the Superior Court of Guam.

We were just elated over 1366 when we received a copy out there. We feel, Senator, that we have reached judicial maturity as far as our court reorganization system. In 1974 we had passed this Guam Reorganization Act. We had created the Superior Court of Guam. That was reversed, of course, by the Supreme Court. This bill will cure it.

We feel it is time that, if I can use a term, the umbilical cord should be now severed between us and the Federal district court. Once our cases leave the trial level they go into the Federal appellate machinery, and sometimes it takes quite a bit of time for the appellate division of the U.S. district court to hear our cases. On the civil side, it runs about a year; year and a half on the criminal. They have to wait until they get a judge from the adjoining Territory of Saipan, and then one from the ninth circuit.

As to the time of the 15 years to keep the ninth circuit with us, it appears perhaps just a little too long. If we could consider cutting it down to 5 years and then let us go on our own just like the regular State courts—we are very grateful to the Federal system, the Federal judicial system. We are very grateful for the ninth circuit who has rendered some great decisions. I think they have helped the legal community. Other than the times that I get reversed, other than that, the decisions are pretty good. But we have submitted a letter from the Governor. The resolution by the 17th Guam Legislature was in favor of it, and we have also a letter from our compiled law revision committee who is favoring the bill.

I know this is a very busy committee, and I hope we didn't take too much time. I urge you to consider this bill and the real speedy passage of it because we are anxious to have our own little organization, the appellate division of the superior court, and with possibly cases going over to the ninth circuit maybe in the same way as a writ of certiorari.

Thank you for the opportunity to testify.

[The prepared statement of Judge Abbate follows:]

Superior Court of Guam
Judiciary Building
Agana, Guam 96910
Telephone 472-8310

Chambers of
Paul J. Abbate
Presiding Judge

September 30, 1983

The Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on Energy
and Supply
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Weicker:

The Judicial Branch of the Government of Guam has reviewed carefully Senate Bill No. 1366 introduced by your subcommittee. After a careful analysis of the bill and its effect on existing law, the court is of the opinion that the bill is in the best interest of the government and people of Guam. Consequently, we entreat you to exert your influence for the enactment of this bill.

The first major change which the bill would affect would be to vest the District Court of Guam with diversity jurisdiction and the jurisdiction of a bankruptcy court of the United States. In Chase Manhattan Bank v. South Acres Development Company, 434 U.S. 236 (1978), the United States Supreme Court held that the language of Section 22(a) of the Organic Act was insufficient to allow the District Court of Guam to exercise diversity jurisdiction. Amended Section 22 (a) as set forth in the subject bill would render that decision moot, and specifically vest the District Court of Guam with the jurisdiction of a district court of the United States, including bankruptcy jurisdiction.

The second and most important change which this act would allow, at the discretion of the Guam Legislature, would be the creation of a local appellate court, decisions of which regarding the laws of Guam and act taken pursuant thereto would be supreme. Under present law, the United States Supreme Court has ruled in People v. Olsen, 431 U.S. 195 (1977) that the Guam Legislature could not create a local appellate court or divest the appellate division of the District Court of any of its appellate functions. The subject bill would allow the Guam Legislature to do just that, thus granting our judiciary freedom from federal control in cases regarding Guam law.

The only distinction which would remain between the Judiciary of Guam and that of a state after enactment and effectuation of the subject bill would be that appeals would lie from decisions of local courts to the Ninth Circuit Court of Appeals in cases involving federal law. Where a state court is concerned, further review could be had directly to the United States Supreme Court through appeal or writ of certiorari. This situation would be temporary, however, as that provision of the bill would expire after fifteen years. Further, that provision of the bill has its advantages in that it will enable more frequent review of local decisions involving federal law than is available to many state judiciaries because of congestion in the docket of the Supreme Court.

In short, we believe the subject bill to be of vast import to the development of the Judiciary of Guam. More importantly, however, it will allow the people of Guam to gain one more indicia of full self-government. We, thus, request your active assistance in expediting enactment of Senate Bill No. 1366.

Your forceful leadership in this matter is greatly appreciated.

Sincerely yours,

Paul J. Abbate

PAUL J. ABBATE

Senator **Weicker**. Thank you very much, Judge.
Mr. Cruz.

STATEMENT OF J. F. CRUZ, DIRECTOR, WASHINGTON LIAISON OFFICE, OFFICE OF THE GOVERNOR OF GUAM

Mr. **Cruz**. Mr. Chairman, thank you for the opportunity to testify. I would like to introduce the two other witnesses that came with me from the Governor's cabinet.

On my right is Mr. Joaquin Perez, the general manager of the Guam Power Authority. On my far left is Mr. Herman Sablan, the administrator of the Guam Environmental Protection Agency.

I have submitted testimony which I would like to place on the record and just open myself to questions. What I would like to highlight is the Governor's support for S. 1366 and also as it regards S. 1367, our support for it with the additional support that we would like to give in what Congressman Won Pat mentioned, his Concurrent Resolution 13. We hope at some time in the near future that concurrent resolution will pass so that all the laws as it relates to Guam will be reviewed and the relevant sections or the detrimental sections be repealed.

On behalf of the Governor, he has asked me to personally extend his invitation and thank you for your support in getting us the full funding for the Tumon Bay project, and we hope you would consider the passage of the present funding as it is stated in there, with whatever proviso you may have as to whether the four, one be the total amount or a lesser amount. It is very important that we complement the project of the reconstruction of the prison.

On the reapportionment section, we disagree with Interior as it relates to their position that it is more important that we address other things. I think the most important thing that any legislature can do is protect the constitutional rights of equal protection and the one man, one vote, and if it means changes in less than 10 years, I think we should be allowed to do that, and I think that we have become politically mature enough to be able to address that issue and address all the other issues that come up.

The Governor has asked me to make special reference to the provisions that I put in this statement about the essential air service. It is very imperative at this point now with the Continental bankruptcy that some concerns be made about the situation on Guam, not only as it relates to passenger service, but everything else, and I just received word that Pan Am who is our major carrier has decided to cut off service for 1 week because they are going to start servicing the New Zealand soccer championship, which leaves us cut off for at least 1 week of service by Pan American, which you see places us in a really tenuous position.

The other thing that I cannot overemphasize is our support for the clean air amendments, and that is what we brought two cabinet members from Guam to speak to the issues that the committee may have and their concerns and to try to assure the committee that the amendments that are proposed here will still be able to address and protest the ambient air quality intent of the Clean Air Act.

Senator WEICKER. I know that Senator Chafee will have questions on that. He is going to have to submit them for the record because he is not here today, but I am looking forward to the statements by those who are here and can anticipate questions that might arise.

[The prepared statement of Mr. Cruz follows:]

TESTIMONY

of

BENJAMIN J.F. CRUZ
Director
Washington Liaison Office
Office of the Governor of Guam

before the

Subcommittee on Energy Conservation and Supply
Senate Committee on Energy and Natural Resources
October 6, 1983

Mr. Chairman and members of this esteemed Committee, I am honored to submit this testimony on behalf of the Governor of Guam.

I

S.1366

The Governor wholeheartedly supports the intent of S.1366 as it relates to clarifying the jurisdiction of the District Court of Guam, and creating a local court with appellate jurisdiction.

Thirty-three years ago after the Guam Congress staged a walkout to challenge questions of its authority, the U.S. Congress passed the Organic Act of Guam which created a full-fledged Legislature whose "legislative power... shall extend to all subjects of legislation of local application not inconsistent with the provisions of this Act and the laws of the United States applicable to Guam." The first branch of the Government of Guam was thereby created.

Eighteen years later, the U.S. Congress created the second independent branch of the Government of Guam when it repealed the appointed Governor provisions of the Organic Act and passed the Elective Governor Act.

The third branch, the Judiciary, has yet to be established to emulate the independent judiciary that exists throughout the fifty states and the Commonwealth of Puerto Rico.

S.1366 makes a giant stride toward achieving that goal. Though we would prefer that S.1366 establish the Judiciary with the same autonomy and independence as the Legislative and

Executive branches, we support the Bill since it will improve the status of the Judiciary. We hope that sometime in the very near future an independent judiciary will be established within the Government of Guam.

The Governor and indeed the People of Guam extend their wholehearted endorsement of Title I, Section 101 relative to treating our brothers and sisters in the Commonwealth of the Northern Mariana Islands as citizens when applying for certain grants. We believe that the citizens of the Commonwealth of the Northern Mariana Islands have done all they could to express their desire to become part of our American family. The fact that the Trusteeship has not been terminated thereby granting them citizenship should not be a bar to their enjoying the benefits of associating with the United States.

II

S.1367

The Governor endorses the intent and effect of S.1367. We believe that it is important to repeal outdated and irrelevant sections of the U.S. Codes, especially as it relates to Guam and her sister territories.

The Governor hopes that this Committee and the U.S. Senate will support Congressman A.B. Won Pat's H.Con.Res. 131 which would establish a commission to review and recommend and repeal other sections that are irrelevant or detrimental to Guam's interest.

III

S.589

A. Tumon Bay

The Governor has asked me to take this opportunity to express to you and have placed on the record the sincerest "Si Yu'us Maase" from the People of Guam for your support of the $11.4 million authorization for the Tumon Bay Project.

Governor Bordallo's testimony before this Subcommittee on March 8, 1983 and the Appropriations Subcommittee on Interior on May 12, 1983 eloquently explains the economic benefits that will be derived from this appropriation and this project.

We thank you for your support and hope that this authorization is passed soon since the Appropriations Conference did approve its inclusion in the Fiscal Year 1984 Interior budget.

B. Prison Funding

The Governor's testimony of March 8, 1983 and May 12, 1983 explain the urgent need for this authorization and approval of an appropriation in the near future.

Presiding Judge Paul J. Abbate can attest to the fact that some attorneys have filed for Writ of Habeas Corpus to have their clients released from the Guam Penitentiary due to the overcrowding situation.

Guam is currently experiencing its first brush with criminal terrorism. Over the four-day period of September 28 through October 1, 1983, six (6) people were shot to death and five (5) others wounded in the worst homicide spree in our island's history.

The Guam Penitentiary must be enlarged to receive the perpetrators of crimes, and be constructed in such a way as to keep them in once incarcerated.

I cannot overemphasize the timeliness and the need for this authorization.

C. Reapportionment (Section 5(b))

The Governor endorses the amendment in Section 5. We agree with the Committee Report that states that the abolition of the restriction is consistent with the self-government that was granted thirty-three years ago and confirmed by subsequent amendments by this Congress. We believe that the system used should be a local decision as long as we use the most recent federal census and honor the equal protection provisions of the U.S. Constitution.

D. Comprehensive Energy Plan

The Governor is a staunch advocate of alternate energy and indigenous renewable energy sources. The Governor endorses the intent of Section 7 to permit the implementation of any project or program recommended in the report. We hope that the Department of Energy will consider Guam as a site for alternate energy projects that are suited to Guam's unique location and climatic conditions.

E. Essential Air Service (Section 10)

The Governor endorses the intent of the amendment to 49 USC 1389(a)(2) relative to Essential Air Service Determination. This is a very timely amendment in light of the recent developments involving Continental Airlines and its wholly-owned subsidiary, Air Micronesia.

I received word from Guam that the Air Micronesian personnel decided to go on strike thereby severing Guam's major air connection with Saipan in the Commonwealth of the Northern Mariana Islands. As a result numerous federal officials will experience difficulty departing Saipan at the conclusion of the South Pacific Commission meetings today.

At the present time Guam is ineligible for an EAS determination because it is being served by three (3) American flag carriers (Pan Am, Continental and South Pacific Island Airways). The presence of more than one American flag carrier currently rules us ineligible for an EAS.

This strict number cutoff does not take into account Guam's unique situation surrounded by ocean and six thousand miles from the Continental United States.

This amendment would allow the Board to consider the fact that three Pan Am flights in the direction of the Continental United States is insufficient. For the information of the Committee, Judge Abbate and the two other witnesses from Guam had to depart Guam on Sunday (Washington's Saturday) in order to be here in time for today's hearing. This situation contributes to a breakdown in contact and communication that cannot be measured in dollars and number of flag carriers.

This amendment would also allow the Board to consider the effect such infrequent flights to and from Guam has on the cost of living on Guam. Fresh fruits from California and Hawaii and perishables have to be flown into Guam. We do not have the luxury of a freight train or truck transport system.

The competition for scarce space in the cargo holds of the few planes that fly to Guam means that between perishables and postal material, the shipper that is willing to pay more gets the space. The end result is that a head of lettuce costs over $3.00 per head to purchase on Guam. The same disparate cost exists for other perishable fruits and food. When the perishable shippers pay the inflated cost, our postal cargo suffers unreasonable delays. As you can see from the Governor's letters to the Committee, it takes seven days to come from Guam, but it takes more than ten (10) days to get there.

I could go on. Suffice it to say that this amendment would free the Board to take other factors into consideration when trying to decide whether Guam should receive an EAS determination. This is important when you are considering an island 9,000 miles away in the middle of the ocean without no other means of timely delivery.

F. Clean Air Act (Section 11)

I cannot overemphasize the Governor's support for this amendment at this time.

For the Committee's information, the Department of Justice, on behalf of the U.S. Environmental Protection Agency, has filed a Motion to Enforce Compliance of the Clean Air Act in the District Court of Guam. The hearing on the motion is scheduled for December 2, 1983.

A ruling for EPA would result in the Government of Guam being forced to either invest over $15 million in a scrubber and shoulder the additional annual operating cost of $2-3 million, or burn low sulfur fuel which costs 20% more than the fuel currently being burned.

The Governor has directed me to inform you that he and the Guam Power Authority are ready to increase electrical power rates by over 20%. An earlier increase was legislatively repealed, but the newly established procedure will result in a similar, if not greater, increase than originally proposed. If Guam is forced to burn low sulfur fuel or install a scrubber, an additional increase will have to be levied which will impose an unreasonable burden on already overtaxed consumers.

The Governor dispatched his two cabinet members directly involved with this situation, Mr. Joaquin Perez, General Manager of the Guam Power Authority, and Mr. Herman Sablan, Administrator of the Guam Environmental Protection Agency. They will present their own testimony and be available to answer questions of the Committee to assure you that compliance is impractical, unnecessary, and unreasonable, and that alternate requirements such as intermittent low sulfur burning will assure attainment and maintenance of the national ambient air quality standards.

CONCLUSION

The Office of the Governor of Guam supports all the sections in S.1366, S.1367 and S.589 that relate to Guam.

We thank the Committee for this opportunity to provide testimony in support of the relevant sections, and we hope that the Committee will move for the expeditious passage of S.589.

THE IMPACT OF COMPLIANCE WITH THE CLEAN AIR ACT USING LOW SULPHUR FUEL OIL AS THE FORM FOR CONTINUOUS COMPLIANCE:

Present cost of residual fuel oil	$29.525/barrel
Total Kilowatt Hours generated per barrel of oil	450
Price per KWH charged	$ 0.0656111
Estimated Cost of LSFO as purchased West Coast U.S.	$37.00/barrel
Estimated Cost of Transportation/Insurance	$ 2.00/barrel
Total Cost	$39.00/barrel
Estimated Price per KWH	$ 0.0866666
Difference	$ 0.0210555
Average Residential Customer Consumption	650 KWH/Month
Average increase in cost to A.R.C.	$13.69/month
Total Cost for Fuel for ARC at Present	$42.65/Month
Total Cost for Fuel for ARC under compliance	$56.33/Month
Average KWH Consumption for GOVGUAM	6,400,000/month
Estimated Cost for Fuel for GOVGUAM under compliance (increase)	$134,755/month
Estimated Yearly Increase	$1,617,062/Year

ASSUMPTIONS MADE IF LOW SULPHUR FUEL OIL IS TO BE FORM OF COMPLIANCE

1. That a source of supply can be found which can provide the type of low sulphur fuel that can be burned in the Cabras Island boilers.

   A. GPA research has indicated that the specific type of LSFO is not available with the immediate vicinity of Guam, i.e., Singapore and/or Indonesia

   B. GPA research has indicated that such fuel is primarily available on the Gulf Coast, Venezuela and West Coast.

   C. Low Sulphur Fuel Oil is available in Singapore and Indonesia but that such oil has characteristic pour points which would require GPA to make substantial investments in storage tank modifications and pipeline insulation to insure that such oil can be transported to the plants at Cabras and Tanguisson.

2. That a source of supply can be found which can provide LSFO of any type and that GPA has adequate funding to make necessary plant modifications:

   A. GPA presently utilizes approximately 1,650,000 barrels per year. This equates to four (4) shipments on tankers of 60,000 tons capacity per year on what essentially are one legged voyages. There is no outbound cargo from Guam which commensurately increases cost of transportation to cover the outgoing empty voyages.

   B. A 60,000 ton load of LSFO, assuming cost CIF of $39.00/barrel, equates to up front financing of $15,400,000, a sum of money which GPA would not be able to finance.

   C. The total requirements of GPA of 1.65 million barrels cannot be considered a lucrative amount for oil suppliers and a supplier would have to be found that would be amenable to a long term contract for such an amount.

ASSUMPTIONS TO BE CONSIDERED IF SEAWATER SCRUBBER IS TO BE USED AS FORM OF COMPLIANCE:

1. GPA can find source of funding for estimated cost of $12.8 Million for constructed costs.
2. Estimated debt service for $12.8 Million for 10 years at 15% ARI would be $2.478 Million
3. Estimated cost of operation and maintenance for seawater scrubber is $1.5 - 2.0 Million

THE PRECEDING ASSUMPTIONS ARE MADE WITH THE GREATER ASSUMPTION THAT THE ENVIRONMENTAL PROTECTION AGENCY WILL APPROVE, DEFINITELY, THE USE OF THE SEAWATER SCRUBBER AS A FORM OF COMPLIANCE. PRELIMINARY INDICATIONS ARE THAT EPA WILL NOT APPROVE THE SEAWATER SCRUBBER RELATIVE TO ITS ENVIRONMENTAL IMPACT ON THE ECOSYSTEM OF THE CABRAS ISLAND AND APRA HARBOR REEF AND MARINE FLORA AND FAUNA. STUDIES PERFORMED BY THE UNIVERSITY OF GUAM AND INDEPENDENT GPA CONSULTANTS HAVE NOT MADE DEFINITIVE EVALUATIONS AND SUMMARIES ON THE EFFECT OF THE SEAWATER SCRUBBERS ON THE MARINE ECOSYSTEM AND THERE A DEFINITIVE STATEMENT OF APPROVAL CANNOT BE MADE REFERENCE SUCH.

IF EPA DOES NOT AGREE TO "SIGN OFF" ON THE IMPACT OF THE SEAWATER SCRUBBER VIS A VIS THE ECOSYSTEMS, GPA WILL NOT UNDERTAKE THE INSTALLATION OF SUCH A SYSTEM AS A FORM OF COMPLIANCE WITH THE CCA.

Flakt Inc.
Environmental Systems Division

SEP 26 RECD - DHL

Office: Arcadia, CA
Date: September 23, 1983
Your Reference:
Our Reference: Req 438.726/Luce

Mr. G. G. Becher
Controller
Guam Power Authority
P. O. Box 2977
Agana, Guam, USA 96910-2977

Subject: Seawater Scrubber
Cabras Plant

Dear George:

We are pleased to submit the following updated budget information on the proposed seawater scrubber system for the Cabras plant:

- Total Budget Price $9,800,000 **
- The price includes:

Gas Handling:	Civil work, booster fans, ductwork from existing stacks to scrubbers, dampers, new stack
Scrubbers:	Civil work, scrubber internals and externals.
Liquor Handling:	Civil work pump station Civil work pipe trench from pump station to scrubbers and from scrubbers to water treatment plant, scrubber pumps, valves, fittings, piping from pump station to scrubbers and from scrubbers to water treatment plant
Water Treatment Plant:	Civil work, equipment
Electrical & Instrumentation:	Cabling, cable trenches, control desk, instruments, motor control center, power distribution.
Erection Engineering Commissioning Start-Up	

** An additional $3,000,000.00 should be factored in for the cost of Erection , Engineering, Commissioning, Start Up, for a Total Cost of approximately $12,800,000.00

37 East Huntington Drive, Arcadia, California 91006
Telephone: (213) 446-8901

Mr. G. G. Becher
September 23, 1983
Page Two

The main extra costs for you to consider should be your own engineering, use of external consultants, financial costs, supply of power to MCC, eventual rebuilding of control room and follow-up studies required by EPA.

insurance

I would also like to thank you and Mr. Joaquin Perez for your permission to use the R. W. Beck reports.

Please let me know if we can be of further service.

Yours very truly,

FLAKT INC.
Environmental Systems Division

Kenyon J. Luce
Regional Sales Manager

cc: Mark Stenson
R. W. Beck

KJL/l

cc / Kim Perez
[illegible]
J. Smith

SHERMAN H. CLARK ASSOCIATES
Menlo Park, California 94025

ORIGINAL

FUTURE AVAILABILITY OF LOW SULFUR (0.8%) HEAVY FUEL OIL (LSFO) AND ITS PRICE DIFFERENCE TO HIGH SULFUR (3.15%) HEAVY FUEL OIL (HFO)

Background

The Guam Power Authority (GPA) is currently evaluating several alternative methods to comply with the Clean Air Act. One such alternative consists of the burning of LSFO in place of th HFO currently being used.

To evaluate this alternative relative to others, GPA needs to know whether LSFO will be available in the Pacific Basin, likely future pricing of such LSFO, as well as the price difference likely to be experienced between LSFO and HFO, and has therefore asked Sherman H. Clark Associates (SHCA) to prepare this report.

Availability

We generally believe that LSFO will be available in the Pacific region during the foreseeable future. This belief is based on our perception of crude oil availability and requirements, as well as supply and demand for fuel oils in the Pacific region in general and in Petroleum Administration for Defense District (PADD) V in particular.

PADD V is the only district in the United States that is expected to experience increasing indigenous crude oil production during the next ten to fifteen years. Continuing and possibly increasing production from Alaska and the future development of reserves already discovered offshore California virtually assure such increase. However, production of fuel oil in PADD V refineries has already declined considerably, from 540 thousand barrels per day in 1980 to 330 thousand barrels per day in 1982 and from 20% of the total refinery yield in 1979 to 15% in 1982, and demand for fuel oil has declined even more. Consumption of fuel oil declined from some 550 thousand barrels per day in 1980 to some 325 thousand barrels per day in 1982, mostly as a consequence of increased natural gas availability for burning in steam electric power plants in California.

Conditions that virtually assure the future availability of LSFO from PADD V refineries include:

- * Ample crude supply is likely to be available
- * Refinery capacity exceeds anticipated future requirements
- * Capacity to produce fuel oil in existing refineries exceeds the projected requirement for fuel oil.

The excess LSFO availability in PADD V can be demonstrated by the existing contractual arrangements for export of LSFO to the Caribbean from a refinery in Alaska; Tesoro at present exports upwards of 15 thousand barrels per day of LSFO with a sulfur content not to exceed (and probably often less than) 0.5% sulfur to Amerada Hess in St. Croix. Furthermore, Chevron has two refineries in California, at Richmond and El Segundo, that can produce upwards of 100 thousand barrels per day of LSFO with a sulfur content as low as 0.25% or lower from any type crude oil, i.e., the production of LSFO in this instance is not conditional on the availability of low sulfur crude as the feedstock.

LSFO from refineries in the Far East, such as Singapore is also likely to be available at present. Normally, this LSFO is shipped to and used in Japan, but Japan's demand for fuel oil has declined as a consequence of the relatively depressed world economic conditions. While the demand for fuel oil in Japan depends on a complex set of variables, such as economic growth and availability (and pricing) of alternative forms of energy, particularly liquefied petroleum gas (LPG) and liquefied natural gas (LNG), in general we would expect the demand for LSFO in Japan to increase again next year in concert with an increase in economic development; thus LSFO from refineries in the Far East may or may not be available to GPA under long term contractual arrangements.

Price

Prices for fuel oils are largely determined by prices prevailing in world markets for crude oils. During the next two years, i.e., through 1985, we expect the price of crude oil to remain constant in actual dollars (i.e., to decline in real terms); for example, the price of Saudi Arabian marker crude would thus remain at $29 per barrel. Demand for OPEC crude is expected to remain on average within an annual range of 16 to 19 million barrels per day during this period so that demand is no longer falling and there is no reason to reduce the price further, yet demand is still too weak to justify any price increase even to offset inflation.

For the following three years, i.e., 1986 through 1988, we envision crude oil prices to increase in step with inflation, i.e., to remain constant in real terms. The world economy and thereby its oil demand will strengthen during this period, although the level of demand for OPEC crude is still expected to be low relative to the level of the last decade.

For the post-1988 period, we can envision two alternative scenarios. One scenario features a severe crude oil supply disruption that forces prices to increase sharply as in 1973/74 and in 1979/80; the other scenario postulates that another supply disruption will not occur and that crude oil prices will increase in real terms at a reasonably steady rate of 3% annually, a price development that will be made possible by an expanded supply of non-OPEC crude oil and steady growth in the world economy of 3% per year.

Estimated prices for Saudi Arabian marker crude and average refinery acquisition price of crude in the United States, both in all PADD's on average and in PADD V separately, are given below (in dollars per barrel):

	Actual Dollars			1982 Dollars		
		Refiners Acquisition Cost			Refiners Acquisition Cost	
	Saudi Marker Crude	United States	PADD V	Saudi Marker Crude	United States	PADD V
With Disruption						
1983	$30.25	$30.15	$28.24	$29.63	$29.53	$27.66
1985	29,00	29.74	28,23	25.75	26.41	25,07
1988	33.50	33.92	33.18	25.71	26.03	25.46
1990	61.75	61.02	58.35	39.16	38.69	37.00
1995	105.00	104.00	100.00	45.32	44.90	43.15
2000	179.00	181.00	176.00	52.60	53.15	51.70
Without Disruption						
1990	39.25	38.90	37.50	27.30	27.05	26.10
1995	58.10	57.70	56.50	31.70	31.45	30.80
2000	85.95	85.40	84.00	36.75	36.50	35.90

Of the two price scenarios, the disruption scenario has a slightly greater probability of occurrence than the nondisruption scenario; however, timing of the disruption is purely conjectural.

The Price Difference Between HFO and LSFO

The specific sulfur content fuel oils contemplated for use by GPA, i.e. 3.15% and 0.8%, are rarely used as such in the United States. Typical sulfur contents of fuel oils used depend on location and may consist of 0.3%, 0.5%, and 0.7% sulfur in the case of LSFO on the East, West, and Gulf coasts respectively, and 2.8%, 2.2%, and 3.0% sulfur in the case of HFO on the East, West, and Gulf coasts respectively.

To develop a better understanding of how the price differences attributable to sulfur content have developed in the past, we have in Tables 1 through 11 compiled the price development of typical HFO and LSFO in various locations in the United States and the Caribbean during the past five and one half years and have calculated the price difference. Since different sulfur contents are generally involved, as well as different sulfur differentials, we have in Table 12 divided the total price difference by the difference in sulfur content and calculated a unit (sulfur) price differential (i.e., the price difference associated with each percent sulfur increment). While the argument can be advanced that unit sulfur price increments are not uniform throughout the sulfur content range, for example the price difference would be greater between 0.3% and 0.5% than between 3.0% and 3.2%, the ranges analyzed here are always fairly large and the unit sulfur differential calculated here should therefore be reasonably representative. The purpose of developing the average unit price differential was to demonstrate how the price differential for HFO and LSFO of the quality contemplated for use by GPA would typically have developed during that time period; this calculation is given in Table 13 and demonstrates that the price difference between LSFO and HFO can range considerably (from less than $2 per barrel to more than $11 per barrel), that price differences fluctuate and often change very rapidly, and that the price differences during the second quarter of 1983 has been as low as it has ever been ,except perhaps during portions of 1978.

Projecting future price differences between LSFO and HFO is thus difficult because it requires the projection of specific fuel oil market conditions that can change very rapidly. It is our opinion, however, that by and large the price difference must be expected to increase again as the glut in oil in general and in fuel oil in particular gradually subsides. While the present price difference may continue for several months, we would expect a typical price difference between LSFO (0.8% S) and HFO (3.15% S) to amount to between $6 and $8 per barrel in 1984, a year of fairly rapid world economic growth, and to remain at that price level or to exceed that price level during most of the 1980s; if another oil supply disruption should occur during that time period, the price difference is likely to explode again to $10 or more, as occurred in 1979/1980.

In terms of the annual requirements of fuel oil by GPA, 1.6 million barrels per year, a price difference of $6 per barrel would require additional fuel expenditures of $9.6 million and a price difference of $8 per barrel would require additional fuel expenditures of $12.8 million.

8-8-83

Senator **Weicker**. Do you agree that the question of diversity jurisdiction should be resolved now rather than waiting until the entire judicial package is resolved?

Judge **Abbate**. It is very important at this time, and we certainly urge immediate passage of that, and I have just finished reading Judge Kennedy's remarks, and I wholeheartedly agree with it.

Mr. **Cruz**. On behalf of the executive, Mr. Chairman, we support that diversity being addressed immediately. As you know, we are trying to establish ourselves as a financial center and unless that issue is addressed and corrected immediately, we may have problems in the very near future about having the financial center issues addressed on Guam and on our own economic stability in the future, and so we hope that is addressed.

There is one other thing that I would like to address as it relates to the court system. I would hope if there are problems with S. 1366 as it relates to the other territories that we can still address Guam's new judiciary separate from the rest of the territories. Our legislature is different from the other territories in that we are unicameral and I don't think there is any reason why we should delay passage of a new equal branch of government in the judiciary until the rest of the territories are ready to do that.

I think Guam has reached the, as the judge said, the judicial maturity and that should be recognized and they should be made an equal branch of government.

Senator **Weicker**. Do either of the others, Mr. Perez or Mr. Sablan, have comments to make at this time?

STATEMENT OF JOAQUIN PEREZ, GENERAL MANAGER, GUAM POWER AUTHORITY

Mr. **Perez**. Mr. Chairman, I would like to first thank you for the courtesy to let me testify.

To just briefly summarize what we are addressing, we are addressing the section of S. 589 that would permit the Administrator of the Environmental Protection Agency leeway to consider on a case-by-case basis compliance with the Clean Air Act. In reference to the Guam Power Authority, basically it is referring to the Cabras powerplant which provides 85 percent of the power on the island.

At the moment, we are preparing for a court case before the Federal District Court in Guam and the Department of Justice, at the prompting of the Environmental Protection Agency, is asking the court to order the Guam Power Authority to comply immediately, full compliance with the Clean Air Act. If the court so rules, this would cost the Guam Power Authority well in excess of $10 million for both, for either the seawater scrubber which their usability is still in question, or the burning of low-sulfur fuel.

If we take this into consideration in reference to the people, such increases will cost approximately $700 a year to the average residential user. To the government of Guam, it would be an increase of $4 million a year in electric bills, and this is to a government that is already unable to pay their bills and which has caused me as general manager of the Power Authority to drastically curtail the services to the government. I have disconnected a widespread disconnection of public street lights. I have disconnected several government agencies, their electrical service, because of their inability to pay their bills.

If we are forced to comply with the Clean Air Act, the situation is going to worsen, and furthermore, they won't be able to pay their bills.

We are seriously behind in our rate levels right now. On the island they are having, convening meetings to discuss the recent GPA charge to its customers. Those increases will equate to approximately 21 percent. If we are forced to comply with the Clean Air Act, it will be an additional increase of 20 to 30 percent. If we raise our power rates on the island by 50 percent, seriously the Authority will not be able to fund the increase. The people can't pay or won't pay, which puts us in greater danger as far as our fiscal viability is concerned.

What the amendment to the omnibus bill does in S. 589 is that it permits the Administrator of the EPA to judge on a case-by-case basis as to whether we can use intermittent controls to control the sulfur dioxide emission of the powerplant, or whether we should go into full compliance. We contend that because of wind patterns on Guam we have no problem with pollution. When the wind pattern does change so that the wind starts blowing inland, this normally occurs in October, it is only for 18 days out of the year. During that period under the monitoring of EPA we burn low-sulfur fuel.

If the law requires the government of Guam or Guam Power Authority to burn low-sulfur fuel for the remainder of the 365 days, then we are actually burning an expensive fuel to accomplish nothing. The records that are at EPA right now would indicate that during those days of the year where the wind is blowing out to sea there can be no pollution level on Guam. The wind velocity and the direction that it blows will take this pollutant, the emissions, out to sea. Within 65 miles it dissipates. This has been proven by EPA, and so as general manager of the Guam Power Authority and as representative of the Governor and the people of Guam, I sincerely request that the committee act favorably on the amendment to Senate bill 589.

Senator **Weicker**. OK.

[The prepared statement of Mr. Perez follows:]

TESTIMONY OF JOAQUIN PEREZ, GENERAL MANAGER OF THE GUAM POWER AUTHORITY BEFORE THE ENERGY CONSERVATION AND SUPPLY SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON AN AMENDMENT TO S. 589

October 6, 1983

Mr. Chairman and members of the Committee. I am Joaquin Perez, General Manager of the Guam Power Authority. I have held that job since January of this year. I appreciate the Committee's courtesy in having me testify, though I should emphasize that I have not had the time to put together as detailed a written statement as I would have liked. I am, however, more than happy to answer your questions.

Let me briefly summarize where we are. GPA is now required, under the terms of a consent decree entered into in litigation between the United States and GPA under the Clean Air Act, as amended, to bring the so-called Cabras power plant into compliance with the Act either by installing a scrubber or continuously burning low sulphur oil. Either alternative would cost GPA many millions of dollars annually that it simply does not have and, in my judgment, cannot realistically expect to collect through rate increases. I will turn to the specific economic facts in a moment.

Until the Clean Air Act was changed in 1977 to prohibit certain control strategies, including the intermittent burning of low sulphur fuel, GPA could control the Cabras sulphur dioxide problem by burning low sulphur on those relatively rare days on Guam when the prevailing easterly winds shifted. In other words, because of our dominant wind pattern, we don't have a pollution problem from Cabras more than 5% of the year and even then our problem is confined to a very small geographic area. We could control the problem with intermittent low sulphur fuel utilization.

But in 1977 Congress did away with the option of part-time, intermittent controls, and we were compelled to come up with a full time solution to what we firmly believe is a part-time problem.

We have negotiated with EPA regularly and done extensive studies of scrubber costs and environmental effects and of low sulfur fuel cost. We were to make our final decision on which way to go late last year, but our consultants recommended that further environmental studies were needed on the scrubber and we asked EPA for more time. After months of not responding, EPA finally called a meeting early this year and once again asked for a final choice by us. In addition, as I understand, we would have to obtain a number of permits before we could operate a scrubber - permits we do not have. Last month, the federal government filed a motion with the federal court in Guam, demanding that the Court force us to choose either the scrubber or the continuous burning of low sulphur.

We must respond to the government's motion in about four weeks and a hearing is scheduled before the Judge on December 2, 1983. As you can see, time is very short.

We are faced with an untenable situation. I must tell you that I do not believe that GPA can possibly afford either alternative.

A scrubber would cost us well over $10,000,000. Even assuming we could obtain financing for that purchase price (and that is extremely doubtful because of GPA's continuing difficulties in raising capital in the private or public markets), the annual debt service would be in the millions of dollars and the annual operating and maintenance costs for the scrubber would be substantial. Those annual costs can be funded only out of rate increases to Guam consumers, a subject I will turn to shortly.

Continuous burning of low sulphur oil would, we estimate, increase our fuel costs by about $9,000,000 a year. That, of course, assumes that we can get the low sulphur, and our consultants have told us repeatedly and recently that there is a serious question whether we can tie down any reliable, long-term supplies of low sulphur. In addition, certain kinds of low sulphur oil would require significant modifications to our generating facilities, capital expenditures which we are also not in any position to fund.

The oil "option" would also have to be paid for by an increase in rates passed through to consumers in a fuel adjustment clause. Though we currently have the legal right to do that, we are talking about a 20% to 30% increase in rates in my opinion. That means roughly a $700 a year increase to the average residential customer and a $4,000,000 a year increase in the rates we would have to charge the government of Guam, whose current inability to pay their bills has caused me to drastically curtail services to the government, including the widespead cutoff of street lights and government electrical services.

We are already seriously behind in the rate levels we need to run this system properly and we have just applied for a substantial increase to be effective October 15. Our legislature has been very sensitive to such increases and has made it difficult in the past for GPA to increase rates. To add another 20% to 30% increase to that increase would, in my candid judgment, be disastrous. Our experience has been that beyond a certain level our customers just can't - and don't - pay. Thus we are likely to find the whole exercise to be totally counterproductive in terms of revenue production to GPA.

Furthermore, I sincerely believe that Guam's situation is almost unique in terms of geography, meteorology and so forth. What is being forced upon us here is really a system of controls and strategies designed primarily for the contiguous 48 states, but certainly not for our distant island territory.

That being the case, the amendment before you makes eminent good sense. The amendment would allow the Administrator to exempt Guam from certain provisions of the Clean Air Act if he finds that compliance is "impractical, unnecessary or unreasonable due to geographical, meteorogical or economic factors. * * *," and we are in a position to demonstrate just that. We will, if this bill passes, petition the Administrator according to its terms, and we can, I am confident, make our case to him. The Committee may certainly rest assured that the Administrator will take a hard look and protect the national interest in pollution control, but we may also be assured that a sensible flexibility not now in the hands of the Administrator will enable us to make our case in the proper forum.

I urgently request the Committee's favorable action on this amendment, and I will be happy to answer any questions you have.

Thank you.

STATEMENT OF HERMAN D. SABLAN, ADMINISTRATOR, GUAM ENVIRONMENTAL PROTECTION AGENCY

Mr. **Sablan**. Thank you, Mr. Chairman, for this opportunity. My name is Herman Sablan. I am the administrator of the Guam Environmental Protection Agency. I will just quickly summarize my statement as it has been submitted.

The decision of the Guam Environmental Protection Agency with regard to this question with the proposed amendment, of course, is to support it. We support it because we in our monitoring efforts and responsibilities we exercise in Guam have found the satisfaction that the ambient air quality standard is being met.

What I think, Mr. Chairman, rather than being repetitive of what has been already expressed, one thing I would like to bring to the attention of the committee if I may, and that is that even with the passage of this amendment, it does not really take away the authority of the Federal Administrator to impose the restrictions on Guam should such drastic measures be required. It does not totally exempt the Territory of Guam from imposition of such measures.

It does, however, provide some flexibility, some reasonable flexibility where these can be applied on a case-by-case basis, and so just generally on the basis of this, Mr. Chairman, I, too, would like to urge the passage of this legislation.

Thank you.

[The prepared statement of Mr. Sablan follows:]

TESTIMONY

of

HERMAN D. SABLAN
Administrator
GUAM ENVIRONMENTAL PROTECTION AGENCY

before the

Subcommittee on Energy Conservation and Supply
Senate Committee on Energy and Natural Resources
October 6, 1983

Mr. Chairman:

My name is Herman Sablan, Administrator of the Guam Environmental Protection Agency.

I appreciate the opportunity to testify before this Committee on the proposed amendments with respect to sections 111 and 123 of the Clean Air Act.

Mr. Chairman, on behalf of the Government of Guam, I am in support of the proposed amendments.

Since 1970, the Guam Power Authority has been hard pressed in its attempt to reach a compromise with regards to the mandate of the Clean Air Act. To continue operation of its power generating plant, under a compromised status, GPA instituted an intermittent control system - that is, on adverse wind conditions, low sulphur fuel is burnt. The Guam Environmental Protection Agency has monitored, and continues to monitor, the effect of this system and finds that it meets the National Ambient Air Quality Standards.

The technical problem of the Clean Air Act, specifically sections 111 and 123, is that continuous control is mandated on all power generating plants in operation after 1970 under the "New Source Performance Standards." Section 123 of "the act" prohibits credit for dispersion. The bottom line intent of the law is to assure national ambient air quality standards. In most cases, these provisions are practical in terms of establishing a methodology, or system in the United States. On the other hand, particularly as to island territories such as Guam, theses provisions of the law are not only unfair, but impractical, unnecessary and certainly not economical. What air pollution that does exist is indeed insignificant.

Yet, although we meet the basic intent of the law, which is clean air, GPA is found in violation of the "letter" of the law.

For non-compliance, the Justice Department is taking GPA to court on December 2, of this year. The result of the court case will force GPA to contract for the construction of a sea water scrubber, or the continuous use of low sulphur fuel, neither of which we can afford, nor need.

The Guam Power Authority is going through a rate increase hearing on power consumption. The rate increase is needed to improve the system, while concurrently maintaining our integrity with the Federal Government on the $36 million loan.

For GPA to enter into additional expense, as will likely be imposed by the court, it (GPA) will have to consider another increase over what is now one of the highest rate structures in the nation.

The emission level of sulphur oxide, nitrogen oxides, and particulates, supported by Guam EPA datum, shows that Guam continues to attain national ambient air quality standards.

Mr. Chairman, the "Act" as it now exists imposes undue hardship on our fledgling economy. However, this is not to say that we are willing to compromise our environment and health, all we are saying is that at least for now, we do not need this drastic imposition. The Federal EPA would still have the authority to determine when such drastic measures should be imposed, even with the passage of the proposed amendment. It does not exempt Guam-it only provides for some reasonable flexibility.

Mr. Chairman and members, I ask that you recommend the passage of this amendment.

Thank you.

Senator **Weicker**. Thank you all very much. I appreciate your testimony, and there might well be further questions on the environmental aspect.

Next to testify on behalf of the Virgin Islands we have the Honorable Ron de Lugo, the Honorable William Brady, the Lieutenant Governor, accompanied by Mr. Derek Hodge of the Virgin Islands Bar Association, and Senator Kenneth Mapp, of the legislature of the Virgin Islands.

Congressman, it's nice to see you. Governor, it's nice to see you.

Mr. **de Lugo**. Mr. Chairman, it's very good to be here before your committee this morning.

The **Chairman**. Who am I missing? Mr. Hodge, is he there?

Mr. **de Lugo**. I don't believe he is here. We have another senator from our legislature; Senator Lloyd Williams is present.

Senator **Weicker**. Why don't you have him come up also?

Mr. **de Lugo**. I don't believe he is prepared to testify. He will back us up and get me off the hook. If you ask me a tough one, I'll defer to Lloyd here.

Senator **Weicker**. Do we have any more senators or congressmen?

Mr. **de Lugo**. We have a distinguished judge from our district court keeping an eye on me back there, Judge David O'Brian. My good friend and former Governor Ralph Paiewonsky is here with us today.

Senator **Weicker**. I see the Governor back there.

STATEMENT OF HON. RON de LUGO, DELEGATE FROM THE VIRGIN ISLANDS, ACCOMPANIED BY LLOYD WILLIAMS, MEMBER OF THE LEGISLATURE OF THE VIRGIN ISLANDS

Mr. **de Lugo**. Well, Mr. Chairman, first of all, let me thank you for your continued support for the Virgin Islands and give you the good news that the SBA problem that we worked on together, that they have opened that in St. Croix and it is functioning very well.

Senator **Weicker**. Beautiful.

Mr. **de Lugo**. And I am going to be very quick on this because I would like to have my statement submitted in its entirety for the record.

Very quickly, on the matter of the EPA, I have had an opportunity to discuss this with the Governor of the Virgin Islands, and our position is that we favor the inclusion of the Virgin Islands in the EPA waiver.

I was hesitant until I had an opportunity to take a close look at it. I feel safeguards are there. It is case by case. We would initiate the request and the EPA would have to go over case by case.

On the question of the removing from the Organic Act that oversight that Interior still has on the excise taxes, the rum excise taxes, let me just say that this is possibly the last piece of colonialism that is still stuck through the 1964 Organic Act. Year by year we have been removing them. We have come a long way on self-government.

I would point out that Puerto Rico that gets the brunt of the excise taxes for its capital improvements, they make their decisions as to how these funds are to be expended. The funds would still have to be expended for capital improvements, and I believe that the legislature of the Virgin Islands and their elected Governor are certainly as capable of making these determinations as someone downtown here in Washington, so I strongly am urging that this language remain in the bill.

I think it is a very important signal to the Virgin Islands, and I think that you are as sensitive as I am of the tremendous role, the positive role that the Virgin Islands is now playing in the Caribbean, in the eastern Caribbean, for the United States, and with that I am referring, of course, to the College of the Virgin Islands, the fact that, you know, just about 2 weeks ago I attended the independence ceremonies of the new nation of St. Knavius. The Lieutenant Governor was with me at that time, and I was impressed by the number of people that are in high positions in this new island nation that were educated, trained in the Virgin Islands, and everywhere I went in St. Knavius I found people that had lived in the Virgin Islands and had a good experience in the U.S. Virgin Islands.

I think we have a real role to play in the President's Caribbean Basin initiative.

Regarding the dairy price support language, I strongly recommend that that language be included for the territories. On the House side, the House Agriculture Committee supports this, and we do not participate in the program. I hope that we will not be brought into the concerns of the States in that battle there. I hope that the territories can be kept separate and that the Virgin Islands can be exempted because, quite frankly, our farmers need all the help that they can get, and on the question of the bonding, the Interior Department said that they felt that this increased bonding authority should be established or should be cut back to 1986 rather than 1990, as I have proposed, but we have consistently proposed a 4-year program to bring our water and power problems under control. They are massive, and we think that we need 4 years, so I think that this is a proper approach.

Regarding the judiciary provisions in this bill, as you know, I introduced on the House side last year a bill identical to yours. I introduced that by request to stimulate debate back in the territory, and I have not reintroduced it this year because the consensus at least in the Virgin Islands has not developed. There is a lot of debate, but there is a lot of very different views as to how we should go about this, so what I am urging, I am simply urging that any judiciary legislation that this committee passes, that it be kept separate, not attached to any legislation that is going to go over to the House, that we would not have an opportunity to look at in Chairman Won Pat's committee because when it comes over to the House and a consensus is developed in the Virgin Islands, I would like to see substantive hearings held over in that body.

I do strongly support the recommendation that the tenure for the district court judges be increased from 8 years to 10 years, and I would ask that that be made retroactive.

I also read that the bar association recommends it be a life term, and I have no problem with that.

That's all I have.

[The prepared statement of Mr. de Lugo follows:]

STATEMENT

Submitted By

HON. RON DE LUGO

Virgin Islands Representative to Congress

Before The

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

OCTOBER 6, 1983

Mr. Chairman:

I welcome the opportunity to comment on the three pieces of legislation before you today: S.589 and its House Amendments, S.1366 and S.1367.

The purpose of the rebate of rum excise taxes to the Virgin Islands is to provide a source for capital improvement projects. I hope you will agree that it is no longer necessary to require Interior's approval of the Virgin Islands use of these funds. The amendment to S.589 which achieves this demonstrates a further commitment to increased autonomy in the territories. It removes one of the final vestiges of the colonial relationship which, until recently, dominated every aspect of territorial government. This change brings us closer to the kind of home rule other United States jurisdictions enjoy.

When Congress approved the collection of a 50 cent per hundred weight fee on the production of milk, backers of the proposal argued that it was reasonable to impose what was in effect a user fee for those milk products benefitting from the dairy price support system. Unfortunately, this collection plan included the territories. As production is locally regulated, territories do not benefit from price supports or contribute to surpluses. Our milk costs are already considerably higher than on the mainland, and local markets can ill-afford this additional expense.

THE HOUSE COMMITTEE ON AGRICULTURE HAS AGREED, VOTING ON A BI-PARTISAN BASIS TO EXEMPT THE TERRITORIES FROM THE EARLIER LEGISLATION. THE BILL IN WHICH THIS LANGUAGE IS INCLUDED, HOWEVER, IS NOT EXPECTED TO MOVE. I THEREFORE URGE YOU TO SUPPORT THE HOUSE INCLUSION OF THE PROVISION IN ITS AMENDMENTS TO S.589. I UNDERSTAND THAT THE AGRICULTURE COMMITTEE HAS NO OBJECTION TO THIS.

UNDER CURRENT LAW, ALL EMPLOYEES OF THE VIRGIN ISLANDS GOVERNMENT ARE REQUIRED TO BE U.S. CITIZENS AND SIGN LOYALTY STATEMENTS. I CONSIDER THE AMENDMENT TO S.589 LIMITING THE CITIZENSHIP REQUIREMENTS TO PRINCIPAL AND ELECTED OFFICIALS TO BE CONSISTENT WITH MAINLAND JURISDICTIONS. FURTHERMORE, IT IS THE FAIRER PROPOSITION IN THAT PUBLIC SERVICE POSITIONS NOT REQUIRING THE SPECIAL TRUST VESTED IN PRINCIPAL AND ELECTED OFFICIALS WILL BE AVAILABLE TO NON-CITIZENS IN NEED OF JOBS AND EAGER TO SERVE THE COMMUNITY.

EARLIER THIS YEAR, AS A MEMBER OF THE APPROPRIATIONS COMMITTEE, YOU APPROVED A $40 MILLION DOLLAR INCREASE IN BOND AUTHORITY TO HELP THE VIRGIN ISLANDS WITH ITS WATER AND POWER PROBLEMS. THE SERIOUS DIFFICULTIES WE FACE HAVE BEEN WELL DOCUMENTED FOR THE BENEFIT OF THIS COMMITTEE, AND WERE CLEARLY APPRECIATED BY THE APPROPRIATIONS COMMITTEE. I THANK YOU, NOT ONLY FOR YOUR SUPPORT FOR THE BOND AUTHORITY, BUT FOR THE $3 MILLION DOLLAR APPROPRIATION FOR OUR WATER DISTRIBUTION SYSTEM REPORTED OUT BY THE APPROPRIATIONS COMMITTEE AND PASSED BY THE SENATE.

While it seems as though the interior appropriations bill will be signed into law, I hope you will agree that the best way to ensure that this measure will be enacted, given the recent history on appropriations legislation is to include it in S.589, The Omnibus Territories Bill.

Due to the difficulties many appropriations have encountered in recent years, the House amendments to S.589 also provide some flexibility regarding the $10 million authorized in the last Congress for water and power projects. The amendment would allow this money to be made available through a loan as well as by grant.

Title II of S.1366 proposes certain changes in the Virgin Islands Judicial System. The legislation picks up on the Virgin Islands Judiciary provisions contained in your bill, S.2729, and mine, H.R.6859, both introduced in the last Congress.

I have not introduced similar legislation in this Congress due to continuing local debate surrounding certain aspects of the proposal. I have asked the Virgin Islands Legislature to consider its position regarding the bill's proposals on two separate occasions, first on April 13 of this year and again on the first of August. To date I have received no reply. Meanwhile, the limited discussion of the matter locally is becoming increasingly polarized.

FRANKLY, I BELIEVE THE LEGISLATION WARRANTS FAR MORE STUDY AND DEBATE. I PREFER CONGRESS DEFERRING FINAL ACTION, AT LEAST ON TITLE II OF THE BILL, UNTIL THERE IS MORE INTEREST IN THE VIRGIN ISLANDS AND A CONSENSUS IS DEVELOPED.

WITH THIS IN MIND, I AM OPPOSED TO ATTACHING THE PROVISIONS OF TITLE II OF S.1366 TO S.589, OR TO ANY OTHER PIECE OF LEGISLATION WHICH HAS GONE THROUGH COMMITTEE IN THE HOUSE. ONCE A CONSENSUS IS ARRIVED AT IN THE VIRGIN ISLANDS, I WILL REQUEST THE HOUSE INTERIOR COMMITTEE TO HOLD HEARINGS ON THE PROPOSAL IN ORDER TO PROVIDE AN IN DEPTH REVIEW OF THESE CHANGES IN OUR LOCAL JUDICIARY.

I SUPPORT S.1367, AND WOULD ONLY SUGGEST THE ADDITIONAL REPEAL OF SECTION 8 OF CHAPTER 47 OF THE ACT OF MARCH 22, 1882 (22 STAT. 31), BIGAMIST RESTRICTIONS, AS IT IS OVERBROAD AND COULD BEST BE ADDRESSED, IF AT ALL, IN LOCAL LEGISLATION.

Senator **WEICKER**. Governor Brady.

STATEMENT OF HON. JUAN LUIS, GOVERNOR, U.S. VIRGIN ISLANDS, AS PRESENTED BY JULIO BRADY, LIEUTENANT GOVERNOR, TERRITORY OF THE VIRGIN ISLANDS

Mr. **BRADY**. Thank you, Mr. Chairman. Good morning. It is always a pleasure to appear before your committee. I begin by bringing you greetings from Governor Luis, who asked me to convey his regrets that he could not appear.

Also he has asked me to thank you personally for your very instrumental role you played in supporting our views on the CBI initiative, and now that it is a reality, we are confident you will continue to support us in the role that we hope we will be able to play in this very important area of the world.

Addressing myself immediately to the issue at hand, let me just quickly summarize the Governor's position. I begin by talking about one of the issues we have felt, the Governor and I felt most strongly about, and that is our request for water and power assistance.

We have consistently asked this committee and other committees of the Congress for a $10 million a year over a 4-year period grant previously, and we at some point indicated our acceptance of the Congress choice to give us a loan, but let me say to you that with our fiscal situation deteriorating and with the other problems accumulating, it seems to me now would be the most appropriate time to again urge you to consider the $10 million per year grant. Even though I recognize the reality that the House has already passed the measure with that being omitted, that I feel with your particular sensitivity to our problems and understanding of them, you can appreciate why at this time we need it more.

It is very much like a business that is failing. If it goes to the bank for help and all the bank can do is raise the interest rate and demand more collateral, it obviously is not being more helpful, so I say in all honesty and candor, now is the time we need it more than ever, so we put in a very strong request for that.

Turning to the court reform bill, as I refer to it, the Governor supports the creation of the interim appellate division to the district court. He supports the grant of authority to the legislature to create a permanent court of appeals, and the Governor supports limiting the district court's jurisdiction to that of any other Federal district court, namely, in Federal matters.

We have no objection to extending the tenure of the district court judges to life. We object to, however, granting the district court exclusive jurisdiction over tax, income tax matters because we feel that would interfere with the growing autonomy of the local government and the power of the executive to prosecute and administer our income tax court which is essentially a local one.

We would object to and would oppose the creation of grand juries. We feel that the history of the functioning of the judiciary and the prosecution in the Virgin Islands has been such that, and has such a good record that we believe that the grand jury will actually create problems that ultimately would most adversely affect the defendants for a fair trial because of excessive pretrial publicity, and we feel it is good perhaps in this large country, but in our small community it could only be an evil that would ultimately work to the detriment of a fair defense.

And lastly, we would object to that 15 years' transition period in regard to the court of appeals being established, that appeals would continue to go to the third circuit. Again in the spirit of our growing autonomy and with the commitment to creating an independent judiciary, a local judiciary, we see no need to continue that judicial colonialism—not that we have any objection to the third circuit. I have had many, many years of very delightful practice in front of that distinguished court, and of course, we are forever grateful for the contribution it has made to us, but in exchange, something must end, and the time for that termination of that judicial umbilical cord has been reached.

Mr. Chairman, that's all I have to say.

[The prepared statement of Governor Luis follows:]

STATEMENT OF
HONORABLE JUAN LUIS, GOVERNOR
UNITED STATES VIRGIN ISLANDS
BEFORE THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

October 6, 1983

Mr. Chairman, distinguished members of this subcommittee, thank you for this opportunity to discuss with you several bills which could have a significant effect on the U.S. Virgin Islands. First, however, I wish to take this opportunity to thank you, Mr. Chairman, and the members of the Committee, for your invaluable assistance during Congress' recent consideration of the Caribbean Basin Initiative. Although we believe that the CBI still may pose a significant threat to our Territory's economic future, the amendments and concessions you were able to obtain for us will help put the Territory and the Congress in a position to greatly reduce the economic damage that the CBI could cause.

The first bill on which I will comment today is S.589, which, as amended by the House Committee on Interior and Insular Affairs, contains various provisions affecting the territories. I shall confine my comments to Sections 4, 5 and 7 of the amended bill and to other issues relating to the Virgin Islands.

Section 4 authorizes the second $10 million of the Virgin Islands Government's 4-year $40 million plan to upgrade the Territory's deteriorating water distribution and power distribution and transmission systems. It also permits both the first and second $10 million appropriations for this purpose to be in the form of a grant or loan from the federal government. The Territory has fully documented to the Committee on several previous occassions its pressing needs in this area, thus I will not repeat them here. Rather, I only wish to stress at this time that the great majority of planned capital improvements for our distribution and transmission systems will result in immediate and significant operating cost savings by reducing electric line power loss and water line leakage. Thus, any investment in these improvements will pay for itself over a relatively short period of time.

Unfortunately, only one million dollars of our $40 million plan has been appropriated thus far by Congress, and even that amount has yet to be made available to the Territory. In light of this reluctance to make grants in the full amount of our needs, I stated earlier this year that we would accept an arrangement whereby 50% of the monies received for this project could be in the form of grants and the balance in direct long-term low-interest loans. Because Section 4 permits the flexibility needed to make this type of arrangement, I favor it.

The House and Senate Appropriations Committees have recently approved another method for the Territory to finance its needed water and power improvements whereby the Territory would be expected to borrow the entire $40 million through a bond issue. Even though this would be more expensive for the Territory, I would also favor such an arrangement if there were no other alternative. Should this committee consider such a method of financing, in addition to raising guaranteed bonding authority by $40,000,000, it would also be necessary to extend the time limit for the obligation of the proceeds of the guaranteed bonds by five years until at least October 1, 1989. This would require an amendment to Section 2 (f) of Public Law 94-392. I would also like to take this opportunity to thank the Senate for including a $3 million appropriation for a grant for water system repairs in its version of the appropriations bill. I would hope that this provision will be accepted by the House and enacted into law.

In February, when I testified before the House Insular Affairs Subcommittee, I requested a funding authorization of $10 million, half in grants and half in direct low-interest loans, to fund an extension of St. Croix's airport runway to 10,000 feet. Reports that Cuba is providing nearly half of the $71 million for construction of a 9,000 foot runway and airport expansion project in Grenada demonstrate the strategic need for the United States to do likewise and fund the St. Croix project in our U.S. territory. The President's Caribbean Basin Initiative is another factor favoring an expanded airport facility in St. Croix; with a lengthened runway in St. Croix, that island could serve as a connecting pont for down-island air service to improve transportation links in the region and permit direct flights from Europe, South America and the U.S. west coast. Of course, the economic benefits of this project to St. Croix's economy, both through increasing tourism to that island and through providing additional air cargo service to help the Territory's industrial development efforts, are obvious. Although the House Committee did not include that authorization in its amendments to S.589, I urge the Senate to do so in order to give us an opportunity to move forward on this most worthy project.

Last year, before the Senate Energy and Natural Resources Committee, I testified on S.2633, a bill which altered the role of the U.S. Government Comptrollers in the Territories. I said that I supported the bill (which has since been enacted as part of P.L. 97-357) but I asked that implementation be delayed until adequate technical assistance was provided to the Territories in order to permit them to assume in a competent and timely manner the greater auditing and reporting roles that the measure would require.

Now P.L. 97-357 has become law and it requires a comprehensive annual financial report for the 1983 fiscal year by the end of January 1984. It is most unlikely that this report will be ready on time for the reasons I stated last year when I asked for a delay in implementation. Thus, I am asking this Committee to add a provision to S.589 amending P.L. 97-357 to grant an extension of the time limit for supplying the annual financial reports until such time as sufficient federal technical assistance is supplied and the results of such assistance fully integrated into the Territory's financial management system.

Section 5 of the House Committee version of S.589 makes two progressive changes in federal statutes relating to the Virgin Islands which I have advocated in the past. These changes are the elimination of the federal requirement for a loyalty oath for local government employees and elimination of federal restrictions on the expenditures by the Virgin Islands of excise taxes returned to the Territory. While I do not oppose a loyalty oath per se, I believe it should be the decision of the local government, not the federal government, whether or not one should be required. Elimination of federal approval of expenditures from the excise taxes returned to the Territory is consistent with the treatment of these taxes with respect to Puerto Rico and with respect to the foreign rum excise taxes to be returned to the Virgin Islands and Puerto Rico under the Caribbean Basin Initiative. Also, this change is desirable in order to avoid the delays, occasionally experienced at present, in obtaining the required federal approval. Both of these proposals would grant increased autonomy to the Territories, and I favor them.

Finally, I also favor Section 7 which would help permit implementation of any program or project recommended in the comprehensive energy plan of each of the Territories. I believe it is important to do whatever is possible to encourage the development of renewable energy resources in the Virgin Islands, and this provision is a good step in that direction.

I will now turn to S.1366, the bill to provide reform of the federal court system in the Territories. Sections 201 through 208 of Title II of this bill are identical to sections 101 through 108 of S.2729 which you, Mr. Chairman, introduced in the 97th Congress. These sections, which are the only portion of this bill on which I shall comment, are based on the judicial reform portion of a draft bill prepared by the Justice Department, at your request, following the defeat at the polls of the Fourth Proposed Constitution of the Virgin Islands nearly two years ago.

Before proceeding further, I wish to point out that I very recently became aware that three months ago the Justice Department prepared a revised draft of the bill. I have not yet been supplied with a copy of the bill and therefore I am not in a position to comment on any changes that it may make in the provisions of S.1366.

I have taken a consistent position on the court reform issue since you first began pursuing this issue in 1981, even before the defeat of the Constitution. I favor meaningful court reform in the Territory which will give the people of the Virgin Islands more control over the judicial branch of government. I believe that the only significant drawback to this increase in local antonomy is that the people of the Virgin Islands will have to bear the additional costs involved in running a full fledged judicial branch, something which we are not presently in a position to do.

Fortunately, it is the apparent intent of Title II of S.1366 to deal with this problem by delaying implementation of its provisions regarding a local appellate court until such time as the legislature establishes such a court. In the meantime, the Virgin Islands would be able to enjoy many of the benefits that a local appellate court would provide by the immediate establishment of an appellate division of the federal district court. I continue to favor these concepts.

I do believe, however, that three changes are needed in S.1366 as follows: First, Section 203 contains language that would give exclusive jurisdiction to the District Court of the Virgin Islands over all civil and criminal cases regarding the income tax laws of the Virgin Islands. I oppose this change in existing law and I urge that this language be deleted from the bill for three reasons: (1) The Virgin Islands income tax law, although a "mirror" of the federal law, is considered a local tax. Therefore continued local administration of the tax law is appropriate and should be maintained at the present level, or increased, rather than cut back as proposed in the administration draft. (2) At present the Attorney General of the Virgin Islands prosecutes criminal income tax cases within the jurisdictional limits of the Territorial Court in that forum. Because the Attorney General does not have authority to conduct criminal prosecutions in the District Court without permission from the U.S. Attorney, this proposed change is likely to hinder criminal tax law enforcement in the Territory. (3) As the committee is aware, the Virgin Islands Government has been negotiating with the U.S. Treasury Department regarding needed changes to the "mirror system" of taxation. If the administration believes there is a need for change on this issue, it should be discussed as part of that negotiation process.

The second change I advocate in S.1366 is also in Section 203. I recommend that the word "exclusively" be inserted in the proposed revised Section 22 (b) of the Revised Organic Act prior to the word "vested" in line 7, page 19 of the bill. I believe this change is required in order to clarify that the intent of the bill is to permit the Virgin Islands, through enactment of a local statute, to decide when the local government will have to bear the increased costs involved when matters now subject to the concurrent jurisdiction of the local and federal courts become the exclusive province of the local courts.

The third change is in section 204 and regards the proposed 15-year transition period during which appeals from the local appellate court would still have to be made to the U.S. Court of Appeals for the Third Circuit. As I have stated in previous testimony, I would prefer that this transition period be reduced to five years or eliminated altogether so that, immediately upon establishment, appeals from the appellate court of the Virgin Islands will be handled in the same way as those from the highest court of any state, that is, by appeal to or by a petition for a writ of certiorari filed with the Supreme Court of the United States.

I would also like to comment on three changes in the bill suggested by the Virgin Islands Bar Association. The Association advocates that grand juries not be required in the Virgin Islands, and the Association suggests that upon their next appointment, Virgin Islands District Court judges become life-tenured "Article III" judges. I have no objections to either of these suggestions. Finally, the Association takes the position that there should be no appellate division established in the district court. As I have stated before, I see no major disadvantages to such an arrangement while the one major advantage of having appeals heard by three judges instead of one, as provided by the legislation, is a much needed reform in the Territory's judicial system. Therefore, I urge that this change in the bill suggested by the Bar Association be rejected.

Finally, I wish to comment on the position taken by one of the members of the Virign Islands Legislature who opposes the bill. This legislator apparently feels that because the voters rejected the proposed constitution (which contained provisions generally similar to those appearing in the legislation) "it would be inappropriate for Congress to make major revisions to the structure of the Virgin Islands government without the prior approval of the people of the Virgin Islands in referendum."

This position apparently rejects the idea that the people of the Virgin Islands, through their locally elected representatives, are mature enough to make their own decisions, because it apparently advocates keeping power to organize the local court system in the Congress rather than transferring that power to the local legislature. I find this position indefensible and I totally reject it. I urge you to do likewise. I feel strongly that the legislation would not significantly affect the operation of the local government judicial system until such time as the local legislature mandates such change. Thus, if it so chooses, the Legislature could hold a referendum before it acts, but there would appear to be no reason for Congress not to empower the legislature to make changes in the system at the time such changes are deemed desirable locally.

The last bill on which I shall comment is S.1367. It appears that this bill is designed to repeal obsolete provisions of Title 48, United States Code, relating to territories. After review of the provisions to be repealed, it appears that each of them is either unnecessary or its subject matter is covered by a more modern statute. Therefore, I have no objection to this bill.

Mr. Chairman, again I wish to thank you and the members of the committee for this opportunity to share with you my views on these important issues affecting the Virgin Islands.

Senator **Weicker**. Where does this place the Governor vis-a-vis Congressman de Lugo's comments on the judicial aspect of what we have before us here? Are you all in agreement that you don't want to move on the judicial package?

Mr. **Brady**. I understand Mr. de Lugo's comments to mean he didn't want it to necessarily interfere with anything.

Mr. **de Lugo**. I don't think we are in disagreement. It isn't that we don't want to move on it. We want the judicial package to come over separately so that the House has an opportunity to look at it and to hold hearings because you know the consensus is not developed back in the territory yet.

Senator **Weicker**. Well, I am all for the consensus, but if consensus is going to mean batting this thing around for several years, I don't think that is going to be the way it is going to be resolved.

My own feeling is that obviously as the represenative of the Virgin Islands you should have the greatest input into this, but my inclination is to approve it over here and send it over there. If you don't want it, just say so.

Mr. **Brady**. I am inclined to agree with the Congressman that it is a matter of such importance that it perhaps ought to be considered separately—not necessarily it has to be delayed for any length of time. Separate doesn't necessarily mean abandonment, but I think it is worthy of that type of separate approach, and I think you can appreciate that. We are talking about something that would fundamentally change a very important part of our government.

Senator **Weicker**. I couldn't agree with you more, and for that reason I don't intend to go ahead and leave it here at all.

Mr. **de Lugo**. Mr. Chairman, I think the problem is that there is a misconception back home. There are some in the community that see this that the Federal Government is imposing this. Congress is imposing this new system on the territory. There are those that have argued that this was included in our constitution and the constitution was rejected by the electorate or those that don't agree with that position would. Nevertheless, there are many that see it that way, and I feel that we should have the opportunity to have an educational program back home, get our message across and hold hearings on the House side.

We have had no hearings on the House side on this matter. It is too important for us.

Senator **Weicker**. Again, I repeat I concur, but I think you better get ready to hold your hearings because I am not going to hold it over here. I am going to shoot it over, and we both understand what that means. It means that—which is exactly why you are here, Congressman. You are going to nave the opportunity to deal with your constituency on this matter, and you are the man that ought to deal with it, not me.

Mr. **de Lugo**. I will be glad to do that.

Senator **Weicker**. I am glad to go ahead and help any way I can, but again I am the last man in the world sitting in this chair that is going to try to exercise control over the Virgin Islands, or Puerto Rico, or any of the territories. I just believe you ought to do your own thing and so I just want to indicate to you that probably that is the course of action that I will take, which is to get it out of here and back to those that should have the responsibility for it anyway.

I know it is always difficult to effectuate any change. You are always going to have somebody that says well, we ought to do it this way, no matter how satisfactory the solution, but I also suggest to you that the judicial system is really the bedrock of anything that you substantatively do and you ought to get the issue resolved.

Mr. **de Lugo**. I couldn't agree with you more, Mr. Chairman, and I think we are in agreement. I am simply saying send it back over to us so that I can deal with it.

Senator **Weicker**. Are there any further comments?

Mr. **Mapp**. Thank you very much.

Senator **Weicker**. Senator Mapp. Am I correct?

Mr. **Mapp**. Yes, sir.

Senator **Weicker**. Senator, it's nice to have you before us.

STATEMENT OF KENNETH E. MAPP, SENATOR, LEGISLATURE OF THE VIRGIN ISLANDS

Mr. **Mapp**. Thank you for the opportunity to appear before the committee to discuss these matters.

I am here to basically represent the views of the chairman of the legislature's Standing Committee on Public Safety and Judicial Affairs, a position which I hold in the territory's legislature.

We have several concerns about the proposal for the implementation of the local appellate court. We are not, in part and parcel, opposed to the development of a low court in the territory. We think it is a step forward in our quest for greater autonomy, but I must say that after I listened to some of the comments of Congressman de Lugo, I am pleased that he has introduced the bill in the Congress to stimulate debate on this subject.

The legislature committee in the Virgin Islands concerning the judiciary is going to begin holding public hearings on the proposal on November 3 in the territory to in fact find out and get a consensus of the committee in this particular matter, but we feel that there are some overriding concerns and priorities that should in fact be considered by this committee in the pursuit of this local appellate court, and that is the overall political development of the territory itself. I will use the term "status" as is used in the territory, and one of the feelings or one of our feelings is that at this stage in the life of the Government of the Virgin Islands, our present form of government in terms of the matter in which our infrastructure is set up is only some 29 years old, and we feel that we have made great strides.

We feel that it is about time, it is the proper time for us to come to a consensus on what our political status or that is, Federal territorial relations, should be. I think that I should point out some factors or some attitudes that have been derived from the people of the Virgin Islands concerning this very subject matter.

There have been some Louis Harris polls that have been conducted in the territory in the last year and a half concerning the attitudes to this subject, and we have found that in the area of the question of statehood, 55 percent of the people surveyed were opposed to that idea, 28 percent were in favor, and some 13 percent or some 10 percent were undecided—in the area of 16 percent were undecided.

In the area of independence, we found that 75 percent of the people surveyed were opposed to that idea, and 13 percent were in favor, and 10 percent were undecided.

That then indicates to us, Mr. Chairman, that the people of the Virgin Islands at least have some consistent direction in where they want to go with their political philosophy for growth of government. It indicates to us that they are not seeking to go on their own as an independent nation, and at this time they are not seeking statehood.

We found also in this poll that people were interested in a greater Federal/territorial relationship between the territory and the Government of the United States, and a greater Federal response in the territory, more responsive to the needs of the territory, so that if we can get the people of the Virgin Islands to come to a consensus in what type of government, what type of status they would like to share with the United States, then we feel that the development of the infrastructures of the government having to do with, in this instance, the courts—the other instances would be the legislature and the executive branch—that we could move in a more positive direction for the overall best interests of the residents and the members of the territory of the Virgin Islands, and in this regard we ask for those considerations.

In terms of the specifics of the bill S. 1366 as it concerns the proposed local appellate court, we find that the proposed interim period is somewhat excessive. I listened earlier to the representatives of Guam, and we concur with their position that the interim period should be reduced to approximately 3 to 5 years.

We feel also and we would mention that the panel of the interim court we feel should be revised. We feel, in this instance, since we are seeking a local appellate court we should attempt to have two local judges sit on this panel with one Federal judge, and in addition, we feel that one of the local judges should be the presiding judge of the interim appellate court.

We do agree and support the premise of granting tenure to the district court judges of the Virgin Islands. The bar association we understand is supporting a life tenure. We have no objections to that proposal.

We would like to point out that in the overall picture we hope to send a resolution to this body indicating the feelings of the committee in the legislature which deals with judicial matters and hopefully representing the views of the legislature after we have been able to derive some consensus from the community on this subject, but we think it is important that this subject remains in proper perspective in terms of the overall growth or political growth of the Virgin Islands and not be done as a separate entity.

I would like to point out that the officials as I have found, and myself, and the people of the Virgin Islands are not opposed in any degree to accepting a greater responsibility for its affairs as it concerns this subject matter, the judicial system, but we feel that we must make these pursuits or follow these pursuits in a systematic manner, encompassing the total growth, the total political growth of our community.

Again, I thank you for allowing us to offer these comments, and we graciously ask that you consider our suggestions to make amendments to the proposed local appellate court, particularly in the area of the interim appellate court.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Mapp follows:]

STATEMENT OF
THE HONORABLE KENNETH E. MAPP
SENATOR
LEGISLATURE OF THE VIRGIN ISLANDS
CHAIRMAN
LEGISLATURE'S STANDING COMMITTEE
ON
PUBLIC SAFETY & JUDICIAL AFFAIRS

October 5, 1983

MR. CHAIRMAN, MEMBERS OF THE SENATE SUB-COMMITTEE ON ENERGY AND NATURAL RESOURCES: I AM KENNETH MAPP, A MEMBER OF THE LEGISLATURE OF THE VIRGIN ISLANDS AND CHAIRMAN OF THE LEGISLATURE"S STANDING COMMITTEE ON PUBLIC SAFETY AND JUDICIAL AFFAIRS.

I TAKE THIS OPPORTUNITY MR CHAIRMAN, TO THANK YOU AND THE MEMBERS OF THIS COMMITTEE FOR ALLOWING ME TO MAKE COMMENTS ON S-1366 & S-1367.

IN DISCUSSING THE NEED FOR A LOCAL APPELLATE COURT IN THE U.S. VIRGIN ISLANDS: ONE SHOULD FIRST CONSIDER THE OVERALL POLITICAL DEVELOPMENT OF THE ISLANDS AND THE VIEWS OF THE POPULOUS AS IT CONCERNS THIS POLITICAL DEVELOPMENT. WE RECOGNIZE THAT THE RESPONSIBILITIES FOR THE TERRITORIES ARE VESTED IN THE CONGRESS OF THE UNITED STATES. HOWEVER, THE UNITED STATES GOVERNMENT HAS CONSISTENTLY SUPPORTED THE PREMISE THAT NO POLITICAL DEVELOPMENT FOR THE TERRITORY SHOULD BE PURSUED ABSENT THE WISHES OF ITS PEOPLE. A POSITION TO WHICH WE CONCUR. IN THIS REGARD, I NOW CALL YOUR ATTENTION TO SOME FACTORS WHICH INDICATE THE PEOPLE'S PREFERENCE CONCERNING THIS SUBJECT.ON NOVEMBER 2,1982 A REFERENDUM WAS HELD WHEREIN THE FOLLOWING QUESTION WAS PLACED BEFORE THE VOTERS OF THE TERRITORY:"SHOULD THE STATUS OF THE VIRGIN ISLANDS BE DECIDED BEFORE A CONSTITUTION IS DRAFTED ?" EIGHT

THOUSAND FIVE HUNDRED AND THIRTY SIX (8,536) VOTERS RESPONDED, "YES" WHILE FIVE THOUSAND ONE HUNDRED AND SEVENTY-TWO (5,172) VOTERS RESPONDED "NO". IN ADDITION TO THE OF THIS REFERENDUM, DURING THE SPRING OF 1981; A LOUIS-HARRIS POLL WAS CONDUCTED TO SAMPLE V.I. ATTITUDES TOWARDS FEDERAL/TERRITORIAL RELATIONS. INTERESTING ENOUGH, THE RESULTS REVEALED THE FOLLOWING: A MAJORITY OF VIRGIN ISLANDERS SURVEYED, FAVORED A CLOSER RELATIONSHIP WITH THE UNITED STATES AND A MORE RESPONSIVE FEDERAL PRESENCE IN THE VIRGIN ISLANDS. CONCERNING THE QUESTION OF STATEHOOD THE LOUIS-HARRIS POLL REVEALED THAT: 55% OF THOSE SURVEYED OPPOSED STATEHOOD, WHILE 28% WERE IN FAVOR AND 16% WERE UNDECIDED. CONCERNING THE QUESTION OF INDEPENDENCE, THE LOUIS-HARRIS POLL REVEALED THAT OF THOSE SURVEYED: 75% OPPOSED INDEPENDENCE; 13% WERE IN FAVOR AND 10% WERE UNDECIDED. IT SHOULD BE NOTED THAT THE PEOPLE OF THE VIRGIN ISLANDS HAVE REJECTED FOUR (4) PROPOSED CONSTITUTIONS FOR THE VIRGIN ISLANDS. TAKING THESE FACTORS INTO CONSIDERATION, ONE CAN VISION THE INDICATORS OF THE PEOPLE AS IT RELATES TO THE QUESTION OF STATUS AND ITS IMPORTANCE AS WE PURSUE OUR POLITICAL DEVELOPMENT. AFTER NOTING THESE INDICATORS, ONE MUST INQUIRE AS TO THE IMPORTANCE OF PURSUING, AT THIS TIME ANY AMENDMENTS TO THE PRESENT REVISED ORGANIC ACT OF 1954. IT MUST BE NOTED THAT WE ARE NOT OPPOSED TO ACCEPTING GREATER RESPONSIBILITY FOR OUR LOCAL MATTERS,BUT WE FEEL THIS MUST BE DONE IN A SYSTEMATIC MANNER AND COMPATIBLE WITH THE POLITICAL DIRECTION OF WHICH THE PEOPLE OF THE VIRGIN ISLANDS WILL

ULTIMATELY DECIDE. IN PERUSING THE PROPOSAL BEFORE THIS COMMITTEE, ONE FINDS THAT THE BASIC CONCEPT FOR THE APPELLATE COURT IS IDENTICAL TO THAT EMBODIED IN THE FOURTH PROPOSED CONSTITUTION: WHICH AS A MATTER OF RECORD, WAS REJECTED BY THE PEOPLE OF THE VIRGIN ISLANDS.

IT APPEARS TO ME MR. CHAIRMAN, THAT THE ADOPTION OF S-1366 WOULD BE A BACK DOOR APPROACH TO ACHIEVE WHAT COULDN'T BE ACHIEVED WITH THE BLESSING OF THE MEMBERS OF OUR COMMUNITY. CONTINUING THE REVIEW OF THE PROPOSAL BEFORE US, WE ALSO NOTE THAT THERE ARE REQUIREMENTS WITHIN THIS PROPOSAL WHICH DO NOT FOSTER NOR ENCOURAGE OUR POLITICAL DEVELOPMENT OR GROWTH. SHOULD THIS COMMITTEE AND LATER THE CONGRESS FEEL THAT THIS MATTER SHOULD BE ADOPTED, WE THEN RESPECTFULLY REQUEST THAT NECESSARY CHANGES BE EFFECTED PRIOR TO SUCH ADOPTION IN THIS REGARD, MR. CHAIRMAN, I CALL YOUR ATTENTION TO SEC. 23,23A,B OF THE PROPOSAL. WE AGREE AND SEE THE NEED FOR A TRANSITIONAL PERIOD FOR THE LOCAL APPELLATE COURT; WE DO NOT, HOWEVER SEE THE NEED FOR AN INTERIM PERIOD OF FIFTEEN YEARS. WE ASK THAT THIS PROVISION BE REDUCED TO APPROXIMATELY THREE AND AT MOST FIVE YEARS. IN ADDITION, IN GRANTING THE AUTHORITY TO ESTABLISH A LOCAL APPELLATE COURT WE OPPOSE THE NEED TO SIT ON THE INTERIM LOCAL APPELLATE COURT TWO FEDERAL JUDGES WITH ONE BEING THE PRESIDING JUDGE OF THIS COURT.

WE FIND THAT THIS REQUIREMENT IS NOT CONDUCIVE TO GREATER POLITICAL AUTONOMY AND DEVELOPMENT. WE SUGGEST IN ITS PLACE, THAT THE INTERIM APPELLATE COURT PANEL CONSIST OF TWO LOCAL

JUDGES AND ONE FEDERAL JUDGE AND THAT ONE OF THE LOCAL JUDGES BE THE PRESIDING JUDGE. WE MUST NOTE FOR THE RECORD THAT WE FAVOR THE EXTENSION OF TENURE TO THE DISTRICT COURT JUDGES NOW SERVING IN THE VIRGIN ISLANDS; AND JOIN THOSE BEFORE US WHO SUPPORTS THIS CONCEPT. IN CONCLUDING, I REITERATE AND ENCOURAGE THE MEMBERS OF THIS COMMITTEE TO ASSIST US IN THE DEVELOPMENT AND PURSUIT OF RESOLVING OUR STATUS QUESTION. PLEASE BEAR IN MIND THAT ONCE THE STATUS QUESTION IS RESOLVED, THE FRAMEWORK OF THIS STATUS; THE FRAMEWORK OF OUR GOVERNMENT, THE CONSTITUTION, IF YOU WILL, WILL BE IN ORDER AND IN ITS PROPER PERSPECTIVE. ONLY IN THIS REGARD CAN OUR GOVERNMENT GROW AND FOSTER IN THE BEST INTEREST OF THE PEOPLE OF THE VIRGIN ISLANDS. I ONCE AGAIN THANK YOU FOR THE OPPORTUNITY TO BE HEARD THIS MORNING. I NOW AVAIL MYSELF TO ANY QUESTIONS YOU MAY WISH TO PRESENT.

Senator WEICKER. Thank you very much, Senator. Senator Williams, do you have any comments to make? While we have got you here, you are more than welcome to speak.

STATEMENT OF LLOYD WILLIAMS, MEMBER OF THE LEGISLATURE OF THE VIRGIN ISLANDS

Mr. WILLIAMS. Thank you very much, Mr. Chairman. It is certainly a pleasure to be here in front of this committee. It is difficult for a politician to have such an opportunity and not make a few comments.

First of all, I have written to you with regard to another matter that I expect to bring before you with regard to a number of areas dealing with increase in the revenue base of the Virgin Islands.

As you know, we are facing a fiscal crisis, a fiscal problem in the territory, as I am sure that the entire Nation is faced with some financial problem, and perhaps at the end of the month I will have an opportunity to meet with you and discuss a number of areas. I think that the Virgin Islands can benefit from an increased revenue base in certain specific projects.

I am the majority leader of the legislature, and to that extent I would like to go on record supporting our delegate's position with regard to the need of separating the issue of the appellate court and to reach a consensus in the island because it is quite controversial at the present time, and I believe that the people of the Virgin Islands should be given an opportunity to discuss and to reach a consensus on the matter.

Senator WEICKER. If I can just interrupt there, and this is what worries me, this is what worries me—I can understand how a consensus can be reached in matters of independence and statehood, broad matters which the average person on the street can relate to and be cognizant of, but let's be candid in this room. I don't know if any of you fellows are lawyers, but you know that when you get to a matter of the judiciary and the judicial system, there are only two people I know who are interested and they are the politicians and the lawyers. The average guy on the street doesn't know anything about it and probably cares less. So when we talk about a consensus to be arrived at by the people of the Virgin Islands, gentlemen, I would only advise that this is something on which you are going to have to give direction.

You are in a unique position both by virtue of your training—some of you are lawyers—by virtue of your training in so far as being the highest officials in the island governmentally, so I wouldn't wait too long to find out what the guy on the street is going to decide. I think you are going to have to lead.

I didn't realize you were the majority leader. I am delighted to have you here, but I think you are going to have to give leadership to this situation.

Mr. DE LUGO. Mr. Chairman, we are talking around each other, and we are in agreement on a number of things, and we are very happy to give leadership, and we have given leadership for many years, something like 30 years.

Let me tell you what happens in a territory. We are dealing here with a territory that was, you know, we were under Denmark up until 1917. We were run out of the Department of War. We had naval officers running the Virgin Islands after 1917. It wasn't until, when was it, 1936 that we finally got a civilian government. The first civilian Governor was Dr. Pearson. In 1954 we got a revised Organic Act. We are going step by step, and the court system is a vital part of our, just as Senator Mapp said, a vital part of our development in self-government, and we want to do it just like Senator Mapp says in his prepared statement.

I want to ask unanimous consent that that statement be included in the record in its entirety. We want to now talk about where we go in our relationship with the United States, where we go in our development, what role we play in the Caribbean, and the court system is part of that.

Senator WEICKER. I agree, but it is a technical matter that is going to really require you people to act, and this is not something you can go out on the street and take a poll on, and I'm sorry, I didn't mean to interrupt Senator Williams. He still has the floor.

I am suggesting to you, Senator, that I hope you grab this one down there, as the legislative body, as indeed Congressman de Lugo has, and decide it among yourselves, those that have the requisite knowledge, and do it.

Mr. WILLIAMS. Thank you, Mr. Chairman. I am sure that the decision will be made and it will be made in a relatively short period of time. The people of the Virgin Islands are known for their political maturity and political involvement in all kinds of decisions. We like to believe ourselves quite involved in just about every single issue. We live and sleep politics. Politics is an everyday occurrence in the Virgin Islands, so it is not really difficult to get our people involved in even technical and detailed decisions, and we realize that we are there to make, to give direction and to provide for leadership, and we will do so without fail.

I wanted to say briefly that we are very strongly in support of the need for assistance for the Water and Power Authority. That has been really a critical situation for not only the people of the Virgin Islands, but also with regard to our business community, in trying to attract outside business to come to the Virgin Islands so we could provide for jobs for our people and for revenues.

Thank you very much. It certainly was an unexpected pleasure to be here before the committee.

Senator **Weicker**. And again, let me say in this meeting with the Governor's office—I was down there a while back, and just from your testimony I gather the matter of water and power is absolutely critical.

Mr. **de Lugo**. Absolutely.

Senator **Weicker**. In the sense of its resolution, so you may rest assured we will work on that.

Mr. **Mapp**. I just wanted to note for the record before we departed that we are going to be giving that educational process in terms of the appellate court because we recognize many lay people are not familiar with the intricacies of the court system, and as I had said before, that on the 3d of November of this year we are having some documents prepared to send to your office as well as Congressman de Lugo's office to request the presence of both of you or a representative of your office so that you could be a part of this process to educate the public on this matter.

I would like to join the others in thanking you for your assistance in helping us to address our water and power authority need, but I felt that I should make that mention or that note on the public education on this particular proposal.

Senator **Weicker**. Well, let me say two things in response to you. No. 1, when I come to the Virgin Islands, I will let you do the work down there. I don't think I want to be on that kind of a vacation.

Point No. 2, I wish you good luck in the sense of the educational process, the legislative process, because even though our friends in the executive branch delay matters that we put in their lap for 6 months and a year, I don't think that is entirely proper. I just want to point out to you, and I have given the Congressman my assurance when I get the bill I will give it to him separately so he can work on it, so you can all work on it. I have no desire, in other words, to put my imprimatur on something which is of your concern and is your right now.

If you all come back here a year from now and I find out we are still educating instead of legislating, that is a different story, so it is yours. Run with it.

Thank you all very much.

Mr. **de Lugo**. Thank you, Mr. Chairman.

Senator **Weicker**. Representing the Northern Mariana Islands, Mr. Herman Guerrero, executive assistant to the Washington representative, Northern Marianas Washington Office; Mr. James Joseph, chairman of the Northern Mariana Islands Commission on Federal Laws, accompanied by Mr. Daniel MacMeekin, executive director.

Gentlemen, you may proceed in any way you care to.

STATEMENT OF JAMES A. JOSEPH, CHAIRMAN, NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Mr. JOSEPH. Mr. Chairman, my name is James Joseph, and I am the voluntary Chair of the Northern Mariana Islands Commission on Federal Laws.

I want to briefly testify in support of title I of Senate bill 1366. This title was recommended for enactment by the Northern Mariana Islands Commission on Federal Laws in its January 1982 interim report to the Congress. The Commission set forth its rationale for the recommended bill in the body of that report, and also suggested the language now incorporated in title I of S. 1366.

We have previously provided copies of that interim report, and I would like to request that it be submitted for the record as part of these proceedings.

Senator WEICKER. It will be included in its entirety in the record.

Mr. JOSEPH. I also want to let you know, Mr. Chairman, that we testified in hearings in September 1982, before the full Senate Committee on Energy and Natural Resources on S. 2088 introduced in the 97th Congress. Title I of S. 1366 is identical to that bill.

Let me just say a brief word about the Commission in order to demonstrate the source of our concern and the scope of our views.

The Northern Mariana Islands Commission on Federal Laws was created pursuant to section 504 of the Covenant to establish a Commonwealth of the Northern Mariana Islands. The purpose of the Commission is to survey the laws of the United States and to make recommendations to the U.S. Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable, and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner.

The members of the Commission were appointed in 1980. In addition to myself, they are Pedro A. Tenorio, the vice Chair of the Commission who is now the Lieutenant Governor of the Northern Mariana Islands; Jesus C. Borja, an attorney practicing in the Northern Mariana Islands; Agnes McPhetres, president of the Northern Marianas College; Edward Pangelinan, the representative to the United States for the Commonwealth of the Northern Mariana Islands; and Myron Thompson, a trustee of the Kamehameha Schools in Honolulu. I might add until recently and until his untimely passing, Congressman Phillip Burton was also a member of this Commission.

In compliance with the authorizing language of the Covenant, four of the members—Mr. Tenorio, Mr. Borja, Ms. McPhetres, and Mr. Pangelinan—are citizens of the Trust Territory of the Pacific Islands and are domiciled in the Northern Mariana Islands.

One final word—in preparing its interim report, the Commission was mindful of its duty to take into consideration the potential effects of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of the Covenant. The draft of each of the recommendations contained in the report were widely circulated among officials of the Government of the Northern Mariana Islands, other public officials, and concerned private citizens, firms and organizations in the Northern Mariana Islands, as well as agencies of the Federal Government concerned with the subject matter of the recommendation.

Numerous comments, criticisms, and suggestions from these sources were of great value to us in preparing this report. It is my privilege and my pleasure, therefore, to say to you that the Commission of the Northern Mariana Islands on Federal Laws unanimously recommends the support and adoption of title I of Senate bill 1366.

I have with me Mr. Dan MacMeekin, the Executive Director of the Commission, who would be pleased to add a word.

Senator **Weicker**. Good.

[The prepared statement of Mr. Joseph and the report follow:]

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

STATEMENT OF

JAMES A. JOSEPH

CHAIR

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

BEFORE THE

SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

ON S.1366

OCTOBER 6, 1983

I am pleased to testify in support of title I of S.1366. This title was recommended for enactment by the Northern Mariana Islands Commission on Federal Laws in its January 1982 interim report to the Congress. The Commission set forth its rationale for the recommended bill in the body of that report and also suggested the language now incorporated in title I of S. 1366. We have previously provided copies of our interim report to the members of this committee and we have a few additional copies here today. You may wish to include the report as part of the record for this hearing. I also want to let you know that we testified in hearings in September 1982 before the full Senate Committee on Energy and Natural Resources on S.2088 (introduced in the 97th Congress). Title I of S.1366 is identical to that bill.

The Northern Mariana Islands Commission on Federal Laws was created, pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 48 U.S.C. § 1681 note) "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner." The members of the Commission were appointed in 1980. In addition to myself, they are Pedro A. Tenorio, the Vice Chair of the Commission, who is now Lieutenant Governor of the Northern Mariana Islands; Jesus C. Borja, an attorney practicing in the Northern Mariana Islands; Agnes Manglona McPhetres, President of the Northern Marianas College; Edward DLG. Pangelinan, the Representative to the United States for the Commonwealth of the Northern Mariana Islands; and Myron Thompson, a trustee of the Kamehameha Schools in Honolulu. Until his recent untimely passing, Congressman Phillip Burton was also a member of the Commission. In compliance with the authorizing language of the Covenant, four of the members--Mr. Tenorio, Mr. Borja, Ms. McPhetres, and Mr. Pangelinan—are citizens of the Trust Territory of the Pacific Islands domiciled in the Northern Mariana Islands. Our executive director is Mr. Daniel H. MacMeekin.

In preparing its interim report, the Commission was mindful of its duty to "take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of [the] Covenant." Drafts of each of the recommendations contained in the report were widely circulated among officials of the Government of the Northern Mariana Islands, other public officials and concerned private individuals, firms, and organizations in the Northern Mariana Islands, agencies of the Federal Government concerned with the subject-matter of the recommendation, and other interested persons. Numerous comments, criticisms, and suggestions from these sources were of great value in preparing the report.

Section 504 of the Covenant charges the Commission with making "such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status." Title I of S.1366, if enacted, would implement the recommendation of the Commission's interim report that citizens of the Northern Mariana Islands be treated as citizens of the United States prior to termination of the trusteeship for purposes of a variety of federal statutes. The Commission believes enactment of this title of S.1366 will facilitate the transition of the Northern Mariana Islands to its new Commonwealth status, and urges its approval by this subcommittee, by the full Senate Committee on Energy and Natural Resources, and by the Congress.

Thank you.

AN INTERIM REPORT
OF THE
NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS
TO THE
CONGRESS OF THE UNITED STATES

January 1982

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

James A. Joseph
Chair and Commissioner
Pedro A. Tenorio
Vice-Chair and Commissioner
Jesus C. Borja
Commissioner
Hon. Phillip Burton
Commissioner
Agnes M. McPhetres
Commissioner
Edward DLG. Pangelinan
Commissioner
Myron B. Thompson
Commissioner

Daniel H. MacMeekin
Executive Director

January 25, 1982

The Honorable George Bush
President of the Senate
Room S-212
The Capitol
Washington, D.C. 20510

Dear Mr. President:

I have the honor of submitting to you an interim report of the Northern Mariana Islands Commission on Federal Laws. The Commission, appointed by the President pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263, March 24, 1976), is instructed "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The Commission is authorized, before submitting its final report, to "make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status." The enclosed report is such an interim report.

Legislation to implement the Commission's recommendations is incorporated within the report. The Commission urges the Congress to enact this legislation at its earliest opportunity.

Sincerely,

James a. Joseph

James A. Joseph

Enclosure

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

James A. Joseph
Chair and Commissioner

Pedro A. Tenorio
Vice-Chair and Commissioner

Jesus C. Borja
Commissioner

Hon. Phillip Burton
Commissioner

Agnes M. McPhetres
Commissioner

Edward DLG. Pangelinan
Commissioner

Myron B. Thompson
Commissioner

Daniel H. MacMeekin
Executive Director

January 25, 1982

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Room H-204
The Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

I have the honor of submitting to you an interim report of the Northern Mariana Islands Commission on Federal Laws. The Commission, appointed by the President pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263, March 24, 1976), is instructed "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The Commission is authorized, before submitting its final report, to "make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status." The enclosed report is such an interim report.

Legislation to implement the Commission's recommendations is incorporated within the report. The Commission urges the Congress to enact this legislation at its earliest opportunity.

Sincerely,

James A. Joseph
James A. Joseph

Enclosure

TABLE OF CONTENTS

Page

INTRODUCTION 1

RECOMMENDATIONS 4

Legislation should be enacted to extend certain statutory rights and privileges of United States citizenship to citizens of the Northern Mariana Islands prior to their becoming citizens of the United States 4

In general 4

Statutes relating to the uniformed services 7

Statutes relating to federal employment 12

Statutes relating to protection and services in foreign countries 17

Statutes relating to commerce 22

Statutes relating to political and civil rights 31

Statutes relating to federal programs and benefits 36

Statutory construction 42

Legislation should be enacted to clarify and affirm the present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands 47

The statute 47

Present applicability 48

Discussion 50

Legislation should be enacted to exclude the Northern Mariana Islands from provisions of the Clean Air Act governing motor vehicle emission and fuel standards. The Administrator of the Environmental Protection Agency should be required to exempt the Northern Mariana Islands from any other requirement of the Clean Air Act on a finding

Page

by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance 51

The statute 51

Present applicability 53

Discussion 54

--Air quality in the Northern Mariana Islands . . . 54

--The unleaded gasoline requirements 56

--The motor vehicle import requirements 59

--Need for early action 60

--Other requirements of the Clean Air Act 61

PROPOSED LEGISLATIVE LANGUAGE 63

Rights and privileges of United States citizenship 63

The Federal Tort Claims Act 75

The Clean Air Act 75

AN INTERIM REPORT
OF THE
NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS
TO THE
CONGRESS OF THE UNITED STATES

INTRODUCTION

On March 24, 1976, Public Law 94-241 (90 Stat. 263) became effective, approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("the Covenant"). Section 504 of the Covenant provided for establishment of this Commission, the Northern Mariana Islands Commission on Federal Laws:

> The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five years domiciled continuously in the Northern Mariana Islands at the time of their appointments) who will be representative of the federal, local, private and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

Commission members were appointed in early 1980. They are James A. Joseph, Vice President, Cummins Engine Company, Washington, D.C., who chairs the Commission; Pedro A. Tenorio, Lieutenant Governor of the Northern Mariana Islands, Saipan, Northern Mariana Islands, who is Vice Chair of the Commission; Jesus C. Borja, Esq., Deputy Director of Micronesian Legal Services Corporation, Saipan, Northern Mariana Islands; the Honorable Phillip Burton, Member of the United States House of Representatives from San Francisco, California; Agnes Manglona McPhetres, Assistant Superintendent of the Northern Mariana Islands Department of Education, Saipan, Northern Mariana Islands; Edward DLG. Pangelinan, Esq., Representative to the United States for the Commonwealth of the Northern Mariana Islands, Saipan, Northern Mariana Islands; and Myron B. Thompson, Trustee, Kamehameha Schools, Honolulu, Hawaii. The Commission held its first meeting on May 7, 1980. It has subsequently hired a small staff and proceeded with its survey of the laws of the United States.

This interim report is made by the Commission pursuant to its authority to "make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status."

In this interim report, the Commission recommends legislation (1) to extend certain statutory rights and privileges of United States citizenship to citizens of the Northern Mariana Islands prior to their becoming citizens of the United States; (2) to clarify and affirm the present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands; and (3) to exclude the Northern Mariana Islands from provisions of the Clean Air Act governing motor vehicle emissions and fuel standards and to require the Administrator of the Environmental Protection Agency to exempt the Northern Mariana Islands from any other requirement of the Clean Air Act on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance.

In preparing this interim report, the Commission has been mindful of its duty to "take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of [the] Covenant." To fulfill that duty, drafts of each of the recommendations contained in this report have been widely circulated among officials of the Government of the Northern Mariana Islands, other public officials and concerned private individuals, firms, and organizations in the Northern Mariana Islands, agencies of the Federal Government concerned with the subject-matter of the recommendation, and other interested persons. Numerous comments, criticisms, and suggestions from these sources have been of great value in preparing this report.

The discussion of the recommendations, below, is followed by proposed legislative language that, if enacted, would implement the Commission's recommendations.

RECOMMENDATIONS

Legislation should be enacted to extend certain statutory rights and privileges of U.S. citizenship to citizens of the Northern Mariana Islands prior to their becoming citizens of the United States.

In general. Many federal laws require United States citizenship as a prerequisite to enjoyment of rights and privileges conferred by those laws. Citizens of the Northern Mariana Islands are not now citizens of the United States.

On full implementation of the Covenant, however, they will become citizens of the United States.* Covenant, section 301. At that time they will no longer be denied these rights and privileges on citizenship grounds.

Only until implementation of the Covenant, then, is legislation necessary for citizens of the Northern Mariana Islands to be treated as citizens of the United States for purposes of these statutes. For this reason the legislation here recommended by its own terms expires at that time, as do all rights and privileges extended pursuant to the legislation.

Full implementation of the Covenant will occur when the United Nations trusteeship pursuant to which the United States presently administers the Trust Territory of the Pacific Islands, including the Northern Mariana Islands, is terminated. Covenant, section 1003(c). The date for termination of the trusteeship is not yet known. During the possibly-lengthy period between now and the end of the trusteeship, no sound reason for denying citizens of the Northern

---

*Within the following six months, such persons may elect to become U.S. nationals rather than U.S. citizens by making a prescribed declaration under oath. Covenant, section 302.

Mariana Islands access to the rights and privileges provided by these statutes is apparent. Removal of these citizenship barriers should ease the integration of the Northern Mariana Islands into the American political family.

The legislation here proposed by its own terms does not alter the geographic reach of any of the affected statutes; it alters only limitations in the statutes that deny federal rights or privileges to citizens of the Northern Mariana Islands because they are not yet citizens of the United States. If a statute now is applicable, for example, only within the geographic area of fifty States and the District of Columbia, the legislation here recommended would expand the rights of citizens of the Northern Mariana Islands only when they are physically within the fifty States or the District of Columbia. If a statute is now applicable within the geographic area of the Northern Mariana Islands, the recommended legislation removes any doubt that citizens of the Northern Mariana Islands, as well as citizens of the United States, are entitled to the benefit of that statute when they are physically present within the Northern Mariana Islands.

The legislation here proposed is not intended to cast doubt on prior administrative determinations to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of a particular statute. Sound legal arguments generally support these administrative determinations. When such determinations have been made, the legislation here proposed should be viewed as affirming those determinations and removing any doubts that may persist.

A "citizen of the Northern Mariana Islands" for purposes of the proposed legislation is defined therein as a person who qualifies as a United States citizen or a United States national under section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands. The Constitution of the Northern Mariana Islands was approved by Presidential Proclamation 4534 of October 24, 1977, and came into effect on January 9, 1978.

Statutes relating to the uniformed services. United States Public Law 96-351, enacted September 15, 1980, allows citizens of the Northern Mariana Islands to enlist in the Armed Forces of the United States. But not all opportunities available to citizens of the United States in the uniformed services are yet available to citizens of the Northern Mariana Islands. Most notably, citizens of the Northern Mariana Islands are not eligible to be commissioned as officers.

Young persons in the Northern Mariana Islands already have responded enthusiastically to the enlistment opportunities opened by

Public Law 96-351. Passage of the legislation here recommended should increase further the attractiveness of service in the U.S. Armed Forces to citizens of the Northern Mariana Islands. The legislation would thus increase slightly the pool of potential recruits available to the Armed Forces. Much of the training and experience provided to citizens of the Northern Mariana Islands in the uniformed services can be expected eventually to contribute to the development of the economy of the Northern Mariana Islands. Ultimately, service by young citizens of the Northern Mariana Islandsin the uniformed services of the United States should accelerate integration of the Northern Mariana Islands into the American body politic.

Public Law 96-351 requires a citizen of the Northern Mariana Islands, to be eligible to enlist in the Armed Forces of the United States, first to indicate "in writing to a commissioned officer of the Armed Forces of the United States of America an intent to become a citizen, and not a national, of the United States upon full implementation of [the] Covenant." Both the legislation here recommended, if enacted, and Public Law 96-351 expire upon full implementation of the Covenant. On full implementation of the Covenant, all citizens of the Northern Mariana Islands become citizens of the United States. Covenant, sections 301, 1003(c). Only during the six months thereafter may they choose to become U.S.

nationals rather than U.S. citizens. Id. section 301. If they do choose to become U.S. nationals rather than U.S. citizens, they would forfeit by their own choice any advantages available only to U.S. citizens. But difficulties might arise in instances where the advantage had been conferred prior to full implementation of the Covenant. Requiring a written declaration of intent to become a U.S. citizen rather than a U.S. national upon full implementation of the Covenant does not eliminate totally possible post-implementation difficulties. Suppose, for example, the declarant merely changed his mind after implementation, deciding only then to become a national. At least, if a prior declaration has been required, the declarant cannot claim surprise if action is taken, at the time nationality is chosen over citizenship, to deprive him or her of the advantage previously conferred.

For this reason and for consistency with Public Law 96-351, the recommended legislation requires such a written declaration of intent by citizens of the Northern Mariana Islands desiring to be treated as citizens of the United States for purposes of statutes relating to the uniformed services.

Federal statutes that deny opportunities in the uniformed services to persons who are not citizens of the United States are as follows:

*10 U.S.C. section 311 limits membership in the militia of the United States, including the National Guard, to U.S. citizens or persons who have declared their intention to become U.S. citizens.

*10 U.S.C. section 510 requires, in general, that members of reserve components of the U.S. armed forces be citizens or lawfully admitted permanent residents of the United States. A U.S. Army reserve unit has recently been established in the Northern Mariana Islands.

*10 U.S.C. section 532 (a)(1), added by section 104 of Public Law 96-513, the Defense Officer Personnel Management Act, enacted December 12, 1980, requires that officers in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps be U.S. citizens.

*10 U.S.C. section 591 requires, in general, that no person be appointed as a Reserve in the U.S. armed forces unless a U.S. citizen or lawfully admitted permanent resident of the United States. See comment under section 510, above.

*10 U.S.C. section 2004 requires officers of the armed forces eligible for detail as law students to be U.S. citizens.

10 U.S.C. section 2031 (b)(1), as amended by Public Law 95-358, enacted September 8, 1978, requires, to establish or maintain a unit of the Junior Reserve Officers' Training Corps, that the unit contain at least 100 eligible U.S. citizens or nationals.

*10 U.S.C. section 2104 requires persons eligible to receive advanced training in the Senior Reserve Officers' Training Corps to be U.S. citizens.

*10 U.S.C. section 2107 (b)(1) requires members of the Senior Reserve Officers' Training Corps to be U.S. citizens in order to be eligible for appointment in the reserve of an armed force and thus eligible for special financial educational assistance.

*10 U.S.C. section 2122 requires U.S. citizenship as a condition of eligibility for participation in an armed forces health scholarship program.

*10 U.S.C. section 4348 requires U.S.

Military Academy Cadets who are U.S. citizens or nationals to agree to complete the course of instruction and to serve as officers in the armed forces for a stipulated period after graduation.

*10 U.S.C. section 6019 requires all officers of all vessels of the United States to be U.S. citizens.

*10 U.S.C. section 6911 (a) limits participation in the Navy's aviation cadet program to U.S. citizens.

*10 U.S.C. section 6958 requires candidates for the U.S. Naval Academy nominated by the Secretary of the Navy from the Regular Navy, the Regular Marine Corps, the Naval Reserve, or the Marine Corps Reserve to be U.S. citizens.

*10 U.S.C. section 6959 requires U.S. Naval Academy midshipmen who are U.S. citizens or nationals to agree to complete the course of instruction and to serve as officers in the armed forces for a stipulated period after graduation.

*10 U.S.C. section 8257 requires Air Force aviation cadets to be U.S. citizens.

*10 U.S.C. section 9348 requires U.S. Air Force Academy cadets who are U.S. citizens or nationals to agree to complete the course of instruction and to serve as officers in the Air Force for a stipulated period after graduation.

*14 U.S.C. section 195 (a) precludes a foreign national from receiving instruction at the Coast Guard Academy except under specified circumstances.

*14 U.S.C. section 371 (a) requires Coast Guard aviation cadets recruited from civilian life to be U.S. citizens.

*14 U.S.C. section 706, added by section 1 of Public Law 96-322, requires that temporary members of the Coast Guard Reserve be U.S. citizens.

*14 U.S.C. section 823 limits membership in the Coast Guard Auxiliary to U.S. citizens.

*32 U.S.C. section 313 requires that a person be a U.S. citizen to be eligible for appointment as an officer of the National Guard.

Statutes relating to federal employment. Various federal statutes and rules issued thereunder require United States citizenship as a prerequisite to employment in particular positions in the civil service or foreign service of the United States. Present law bars citizens of the Northern Mariana Islands from most federal positions in the continental United States (31 U.S.C. section 699b), prevents them from serving as Peace Corps Volunteers (22 U.S.C. section 2505) or from being appointed to the Foreign Service (with limited exceptions) (22 U.S.C. section 3941), and excludes them from some types of employment, for example, as commissioned officers in the U.S. Public Health Service (42 U.S.C. section 204). Should a citizen of the Northern Mariana Islands obtain federal civil service employment not barred by these statutes, he or she will not be entitled by law to all benefits accorded other federal employees, because other federal statutes deny certain employment benefits to federal employees who are not U.S. citizens. For example, now, a citizen of the Northern Mariana Islands employed outside of the United States (and the Northern Mariana Islands are defined as outside of the United States) is not permitted to participate in the federal employees' life insurance program or health insurance program (5 U.S.C. sections 8701(a) and 8901(1)), even though a U.S. citizen employed at the same location could participate in both programs.

Federal statutes that (1) bar persons who are not U.S. citizens from particular federal positions, or (2) limit employment benefits available to federal employees who are not U.S. citizens, are as follows:

> *5 U.S.C. section 5342 (c) requires that certain blue-collar civil service employees entitled to compensation at prevailing wages in a particular area, within the several States or the District of Columbia, be residents of one of the States or the District of Columbia or a U.S. citizen unless the Secretary of Labor certifies no such resident or citizen is available.
>
> *5 U.S.C. section 5343 (a)(5) requires the Office of Personnel Management to establish wage schedules and rates for U.S.-citizen prevailing-rate employees who are employed outside the United States, its territories and possessions, or the Trust Territory of the Pacific Islands.
>
> *5 U.S.C. section 5561 requires that missing Federal employees, to be eligible for continued full pay and certain allowances, be citizens or nationals of the United States or aliens admitted for permanent residence in the United States.
>
> *5 U.S.C. section 5595 (a)(2)(iii) excludes from the definition of employees entitled to severance pay on involuntary separation from the civil service aliens employed outside the several States, the District of Columbia, or the Canal Zone.
>
> *5 U.S.C. section 5912 allows U.S. citizens employed by the United States in a foreign country to be furnished living quarters and utilities in a Government owned or rented building.
>
> *5 U.S.C. section 5922 (a) limits the payment of overseas differentials and allowances to civil service employees who are U.S. citizens unless payment to a noncitizen is authorized specifically by another statute.
>
> *5 U.S.C. section 6301 (2)(viii) excludes aliens from civil service annual and sick leave benefits.
>
> *5 U.S.C. section 7103 (a)(2), added by

section 701 of Public Law 95-454, the Civil Service Reform Act of 1978, enacted October 13, 1978, excludes aliens employed outside the United States from civil service collective bargaining, grievance, and other labor rights.

*5 U.S.C. section 7532 (c) gives civil service employees suspended from employment for reasons of national security who are U.S. citizens certain notice and hearing rights.

*5 U.S.C. section 8171 makes citizens or residents of the United States or its territories or possessions employed by nonappropriated fund instrumentalities (such as post exchanges) outside the United States eligible for compensation for work-related injuries pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act (chapter 18 of title 33, U.S.C.).

*5 U.S.C. section 8501 (1)(D) excludes in determining for civil service unemployment benefits, employment of non-citizens outside the United States, Puerto Rico, and the Virgin Islands.

*5 U.S.C. section 8701 (a)(B) excludes from participation in the federal employees life insurance program persons who are not citizens or nationals of the United States who are employed outside the United States and the Panama Canal Zone.

*5 U.S.C. section 8901 (1)(ii) excludes from participation in the federal employees health insurance program persons who are not citizens or nationals of the United States who are employed outside the United States or the Panama Canal Zone.

*13 U.S.C. section 22 requires all permanent officers and employees of the Bureau of the Census to be U.S. citizens.

*20 U.S.C. section 901 authorizes employment of U.S. citizens as teachers in overseas schools operated by the Department of Defense.

*22 U.S.C. section 1451 authorizes the loan of U.S. Government employees who are U.S. citizens to foreign governments for non-military purposes.

*22 U.S.C. section 1452 provides that U.S. citizens loaned to foreign governments pursuant to section 1451, above, continue to be treated as U.S. Government employees for purposes of compensation, allowances, and benefits.

*22 U.S.C. section 1453 allows U.S. citizens loaned to foreign governments pursuant to section 1451, above, to be appointed to offices in such foreign governments as necessary (but not to take an oath of allegiance to that government).

*22 U.S.C. section 2396 (e) authorizes payment of certain training costs of Foreign Service personnel who are U.S. citizens and who are assigned to positions in the foreign assistance program.

*22 U.S.C. section 2504 (a) requires Peace Corps volunteers to be U.S. citizens or nationals.

*22 U.S.C. section 2505 requires Peace Corps volunteer leaders to be U.S. citizens or nationals.

*22 U.S.C. section 3903, added by section 103 of Public Law 96-465, the Foreign Service Act of 1980, enacted October 17, 1980, divides members of the Foreign Service into seven categories, one of which is U.S. citizen personnel appointed pursuant to 22 U.S.C. section 3943, section 303 of the Act.

*22 U.S.C. section 3941, added by section 301 of Public Law 96-465, above, requires that only U.S. citizens be appointed to the Foreign Service, other than for service abroad as a consular agent or as a foreign national employee.

*22 U.S.C. section 3952, added by section 312 of Public Law 96-465, above, requires U.S. citizenship as a condition to commission of a member of the Foreign service as a diplomatic or consular officer.

*22 U.S.C. section 3963, added by section 403 of Public Law 96-465, above, authorizes establishment of a salary schedule for members of the Foreign Service who are U.S. citizens.

*22 U.S.C. section 3969, added by section 409 of Public Law 96-465, above, requires that consular agents who are U.S. citizens be paid at least the U.S. minimum wage.

*22 U.S.C. section 3984 (b), added by section 504(b) of Public Law 96-465, above, requires assignment at least once every 15 years of career Foreign Service members who are U.S. citizens to duty in the United States.

*22 U.S.C. section 4008, added by section 608 of Public Law 96-456, above, authorizes mandatory retirement for substandard performance of career Foreign Service members who are U.S. citizens.

*22 U.S.C. section 4081, added by section 901 of Public Law 96-465, above, authorizes payment of certain rest and recuperation travel expenses of members of the Foreign Service who are U.S. citizens and members of their families.

*22 U.S.C. section 4083, added by section 903 of Public Law 96-465, above, requires members of the Foreign Service who are U.S. citizens to take periodic leaves of absence in the United States.

*22 U.S.C. section 4084, added by section 904 of Public Law 96-465, above, authorizes medical examinations, inoculations, and vaccinations for members of the Foreign Service who are U.S. citizens and members of their families.

*22 U.S.C. section 4131, added by section 1101 of Public Law 96-465, above, limits the availability of Foreign Service grievance procedures to members who are U.S. citizens.

*29 U.S.C. section 633a (a) exempts aliens employed outside the United States from the prohibition of age discrimination in federal employment.

*31 U.S.C. section 699b requires federal employees in the continental United States paid from appropriated funds to be U.S. citizens. This provision, or a substantially similar provision, is common in annual appropriation acts. The language in section 1 of the legislation herein recommended is directed toward any such provision.

*38 U.S.C. section 235 allows overseas employees of the Veterans' Administration who are U.S. citizens certain pay and allowances.

*38 U.S.C. section 4105 (b) restricts to citizens of the United States certain appointments in the Department of Medicine and Surgery of the Veterans' Administration.

*42 U.S.C. section 204 requires that commissioned officers in the Public Health Service be U.S. citizens.

*42 U.S.C. section 4954 (c) implies that only citizens or legal residents of the United States may become VISTA volunteers.

In addition, federal civil service rules require U.S. citizenship or nationality for admission to civil service competitive examinations and for appointment in the competitive civil service. Civil Service Rule VII, 5 C.F.R. section 7.4 (1981). See Executive Order 11935 (Sept. 2, 1976), 3 C.F.R. Comp. 146 (1977). The rules also allow recruitment and appointment of U.S. citizens to positions in the competitive service overseas, including such positions within the Northern Mariana Islands, without regard to civil service competitive requirements. Persons who are not U.S. citizens are recruited and appointed overseas, including in the Northern Mariana Islands, without regard to any of the benefits and protections afforded by the civil service laws. Civil Service Rule VIII, 5 C.F.R. sections 8.2-8.4 (1981). These requirements were promulgated by the President pursuant to authority granted him by sections 3301 and 3302 of title 5, U.S.C.

Statutes relating to protection and services in foreign countries. Citizens of the Northern Mariana Islands currently are entitled to the diplomatic and consular protection of the United

States by virtue of the trusteeship agreement pursuant to which the islands are administered by the United States. Article 11(2) of the Trusteeship Agreement for the Former Japanese Mandated Islands (T.I.A.S. 1665, 61 Stat. 3301 (1947)) provides:

> The administering authority shall afford diplomatic and consular protection to inhabitants of the trust territory when outside the territorial limits of administering authority.

Neither the scope nor the particularities of the diplomatic and consular protection provided citizens of the Northern Mariana Islands under Article 11(2) of the Trusteeship Agreement are spelled out by statute.

Numerous federal statutes, however, afford U.S. citizens in foreign countries specific protections and services of the United States Government. At the end of the trusteeship, when citizens of the Northern Mariana Islands become citizens (or nationals) of the United States, they will become entitled to the protections and services afforded citizens (or nationals) of the United States by these statutes rather than the generalized diplomatic and consular protection to which they are now entitled under the Trusteeship Agreement. The cost of extending the specific protections and services afforded by federal statute prior to termination of the trusteeship is minimal, if not nil.

Federal statutes that authorize protections or services of the

United States Government for persons in foreign countries who are citizens or, in some cases, nationals of the United States are as follows:

*10 U.S.C. section 351 allows the President to arm American vessels to protect U.S. citizens and their property or commercial interests from the application of force by a foreign government.

*10 U.S.C. section 1486 allows the Secretary of Defense to provide on a reimbursable basis mortuary services for certain U.S. citizens who die outside the United States.

*19 U.S.C. section 1498 (a)(8) allows the Secretary of the Treasury to prescribe regulations for entry into the United States of personal effects of U.S. citizens who have died in a foreign country.

*19 U.S.C. section 2462 (b)(4) and (6) restrict favorable trade treatment otherwise available to a developing country if the country has expropriated property of U.S. citizens or if the country fails to enforce arbitral awards in favor of U.S. citizens.

*22 U.S.C. section 1732 requires the President to demand and to take other steps for the release of U.S. citizens unjustly deprived of their liberty by a foreign government.

*22 U.S.C. section 2151n-1 instructs the Secretary of State to make every effort to seek the early release of U.S. citizens unjustifiably held in foreign jails and to take steps to enhance the protection and welfare of U.S. citizens imprisoned abroad.

*22 U.S.C. section 2351 (b)(4) requires the President to assist U.S. citizens in obtaining just compensation for losses sustained or payments exacted in violation of treaties for commerce, trade, or taxes.

*22 U.S.C. section 2370 (c) prohibits assistance to the government of any country indebted to any U.S. citizen or person for goods and services furnished or ordered. Subsection (e) requires suspension of assistance to countries which have expropriated property of U.S. citizens abroad.

*22 U.S.C. section 2670 (f) authorizes the Secretary of State to pay expenses incident to the relief, protection, and burial of American seamen and alien seamen from U.S. vessels in foreign countries and in U.S. Territories and possessions. Subsection (g) authorizes the Secretary to pay the expenses incurred in acknowledging the services of officers and crews of foreign vessels and aircraft in rescuing American seamen, airmen, or citizens from shipwreck or other catastrophe abroad or at sea. Subsection (j), as amended by section 108 of Public Law 95-426, the Foreign Relations Authorization Act, Fiscal Year 1979, enacted October 7, 1978, authorizes the Secretary to provide emergency medical assistance, dietary supplements, and other emergency assistance to U.S. citizens incarcerated or destitute abroad and unable to obtain such assistance otherwise.

*22 U.S.C. section 3306 (a), added by section 7(a) of Public Law 96-8, the Taiwan Relations Act, enacted April 10, 1979, authorizes the American Institute of Taiwan to act in Taiwan as provisional conservator of the personal estates of deceased U.S. citizens and to perform services for U.S. persons normally performed by consular officers.

*22 U.S.C. section 4193 gives consular officers the right to receive protests or declarations made by or on behalf of U.S. citizens.

*22 U.S.C. section 4195 requires consular officers to discharge certain duties with respect to the personal estates left by U.S. citizens who died, or at time of death were domiciled, within the jurisdiction of the consular officer.

*22 U.S.C. section 4197 requires consular officers to carry out lawful testamentary directions of a U.S. citizen who dies within his or her jurisdiction with regard to personal property in the country at time of death.

*22 U.S.C. section 4217 makes criminal embezzlement of personal property of a U.S. citizen by a consular officer.

*22 U.S.C. section 4218 makes criminal false certification by a consular officer that property belonging to foreigners belongs to a U.S. citizen.

*31 U.S.C. section 492a allows U.S. disbursing officers in foreign countries where satisfactory banking facilities are not available to cash checks drawn on the Treasurer of the United States for the accommodation of any person who is a U.S. citizen.

*31 U.S.C. section 711 (1) makes a permanent indefinite annual appropriation for payment of the proceeds of the personal estates of American citizens who die abroad to the legal representatives of the deceased.

*33 U.S.C. section 382 allows the President to order seizure of vessels committing piratical acts against U.S. citizens.

*33 U.S.C. section 383 allows merchant vessels owned in whole or in part by U.S. citizens to resist pirates and to capture their vessels.

*42 U.S.C. section 1313 authorizes reimbursable temporary assistance to certain needy U.S. citizens or dependents of U.S. citizens returned or brought from foreign countries.

*42 U.S.C. section 6391 requires the President (or his delegate) in allocating petroleum products or electrical energy among classes or users to give consideration to the need to foster reciprocal and nondiscriminatory treatment by foreign countries of U.S. citizens engaged in commerce in those countries.

*50 U.S.C. App. section 2 defines "enemy" and "ally of enemy" for purposes of the law forbidding trade with either to exclude U.S. citizens not residing in the territory of a nation with which the United States is at war. The same section defines "United States," apparently only in a geographical sense, to include "all land and water, continental or insular, in any way within the jurisdiction of the United States" including areas occupied by U.S. military or naval forces. This definition probably does not expand similarly the definition of "United States" for purposes of determining who is a U.S. citizen, since Congress no doubt did not intend the populace of enemy territory occupied by the U.S. armed forces to be treated as U.S. citizens.

*50 U.S.C. App. section 8 (b) gives any U.S.

citizen the right to abrogate any contract entered into with an enemy or ally of an enemy prior to beginning of a war or within thirty days after the beginning of the war.

*50 U.S.C. App. section 10 allows U.S. citizens, on approval of the President, to pay taxes or fees required by, or file applications with, an enemy, or an ally of an enemy in connection with patents, copyrights, and trademarks; and allows the President to grant to any U.S. citizen a license to use patents, copyrights, or trademarks owned by an enemy or an ally of an enemy.

*50 U.S.C. App. section 12 limits sale of alien property to purchasers who are U.S. citizens, unless the President determines otherwise; and prohibits resale to a person not a U.S. citizen.

Statutes relating to commerce. A variety of federal statutes extends a wide range of privileges and services to citizens of the United States employed in commercial endeavor. Citizens of the Northern Mariana Islands may not be able to take advantage of many of these privileges and services or they may not want to do so. At the present time, however, they do not have a clear right to take advantage of any of the numerous commercial privileges and services provided citizens of the United States pursuant to these federal statutes, even if they are desirous and capable of doing so.

The cost of extending these commercial privileges and services to citizens of the Northern Mariana Islands prior to termination of the trusteeship is minimal. Extension of these privileges and services is also consistent with the recognition by the United States, embodied in section 701 of the Covenant, of the need to promote economic development and to include the people of the Northern Mariana Islands in the American economic community.

Federal statutes that protect, aid or encourage employment, investment, or other participation in commercial enterprise are as follows:

> *7 U.S.C. section 1922 requires recipients of certain agricultural real estate loans to be U.S. citizens.
>
> *7 U.S.C. section 1934, added by section 113 of Public Law 95-334, the Agricultural Credit Act of 1978, enacted August 4, 1978, requires recipients of certain loans to low-income farm owners to be U.S. citizens.
>
> *7 U.S.C. section 1941 (a) requires recipients of certain agricultural operating loans to be U.S. citizens.
>
> *7 U.S.C. section 1961 (a) requires recipients of certain agriculture and aquaculture disaster loans to be U.S. citizens.
>
> *12 U.S.C. section 72, as amended by section 2 of Public Law 95-369, the International Banking Act of 1978, enacted September 17, 1978, requires, in general, directors of a national bank to be U.S. citizens.
>
> *12 U.S.C. section 619 requires, in general, the majority of the stock in the corporations organized to engage in international or foreign banking or financial operations, or banking or financial operations in a U.S. dependency or possession, to be held by U.S. citizens.
>
> *12 U.S.C. section 1427 (a) requires directors of Federal home loan banks to be U.S. citizens.
>
> *12 U.S.C. section 2222 (b) requires members of boards of directors of farm credit district boards to have been U.S. citizens for at least ten years.
>
> *15 U.S.C. section 1126 (i) provides that U.S. citizens or residents shall receive all benefits

afforded by the United States to foreign citizens pursuant to international trademark conventions.

*16 U.S.C. section 742c (b)(7) requires applicants for certain commercial fishery loans from the U.S. government to be U.S. citizens or nationals.

*16 U.S.C. section 797 (e) requires recipients of Federal Power Commission licenses to be U.S. citizens. The same subsection expressly extends the jurisdiction of the Commission to streams and other bodies of water in "the Territories".

*17 U.S.C. section 104 (b) grants protection for published works under the U.S. copyright laws to, among other categories, works of which one or more authors is a national or domiciliary of the United States.

*19 U.S.C. section 1526(a) makes unlawful importation of merchandise of foreign manufacture bearing a trademark owned by a U.S. citizen and registered in the Patent and Trademark Office unless the written consent of the trademark owner is produced at time of entry.

*20 U.S.C. section 107a (a)(5) requires that blind persons licensed to operate vending facilities in federal buildings be U.S. citizens.

*22 U.S.C. section 2198 limits to U.S. citizens eligibility for investment insurance provided by the Overseas Private Investment Corporation.

*26 U.S.C. section 897, added by Subtitle C of Title XI of Public Law 96-499, enacted December 5, 1980, imposes certain taxes, including a 20-percent minimum tax, on disposition of real property in the United States by a nonresident alien or a foreign corporation.

*30 U.S.C. section 1522 (b)(7), added by section 622(b)(7) of Public Law 96-294, the Energy Security Act, enacted June 30, 1980, requires U.S. citizenship as a condition for eligibility for certain insurance on investments in geothermal resources.

*33 U.S.C. section 1502 (5) defines "citizen of the United States" for purposes of the Deepwater Port Act. 33 U.S.C. section 1503 (g) limits to U.S. citizens the issuance of licenses for the ownership, construction, and operation of a deepwater port. If citizens of the Northern Mariana Islands were considered as citizens of the United States for purposes of subsection (5) of section 1502, then subsection (g) of section 1503 would not bar citizens of the Northern Mariana Islands from obtaining deepwater port licenses.

*42 U.S.C. section 1484 (f)(3) requires domestic farm laborers to be citizens or legal residents of the United States for purposes of an insurance program for loans for providing housing for domestic farm labor.

*42 U.S.C. section 2133 (d) prohibits an alien from obtaining a commercial nuclear energy license.

*42 U.S.C. section 2134 (d) prohibits an alien from obtaining a license for medical, industrial, commercial, or research uses of nuclear energy.

*42 U.S.C. section 5906 (b)(2)(A) requires members of boards of directors of joint Federal-industry corporations established for nonnuclear energy research and development to be U.S. citizens.

*42 U.S.C. section 5919 (p)(1), added by section 207(b) of Public Law 95-238, the Department of Energy Act of 1978--Civilian Applications, enacted February 25, 1978, requires recipients of federal loan guarantees for certain synthetic fuels facilities and municipal organic waste energy generation facilities to be U.S. citizens. "United States" is defined by subsection (p)(1) to include the 50 States and Guam, but the statute was enacted after January 9, 1978. Consequently, the statute is not applicable to the Northern Mariana Islands by virtue of section 502(a)(1) or (2) of the Covenant.

*42 U.S.C. section 8779 (b)(4), added by section 179(b) of Public Law 96-294, above, requires that technology, patents, and trade secrets developed by certain projects in the Western Hemisphere outside the United States assisted by the U.S. Synthetic Fuels Corporation be available to U.S. citizens.

*42 U.S.C. section 9101 (a)(3), added by section 2(a)(3) of Public Law 96-320, the Ocean Thermal Energy Conversion Act, enacted August 3, 1980, declares as a purpose of the Act the authorization and regulation of the construction, location, ownership, and operation of ocean thermal energy conversion plantships by U.S. citizens. Although section 9102(15) defines "State" to include the "Commonwealth of the Northern Mariana," section 9102(18) defines "United States citizen" so as apparently to exclude citizens of the Northern Mariana Islands.

*42 U.S.C. section 9111 (a), added by section 101(a) of Public Law 96-320, above, requires U.S. citizens to obtain a license to own, construct, or operate an ocean thermal energy conversion facility. Subsection (c) authorizes the issuance of such licenses to U.S. citizens. Subsection (f) requires the issuance of such licenses to qualified U.S. citizens. See comment under section 9101, above.

*42 U.S.C. section 9118 (e)(2)(C), added by section 108(e)(2)(C) of Public Law 96-320, above, requires that ocean thermal energy conversion facilities be manned by U.S. citizens or aliens lawfully admitted for permanent residence, except in specified circumstances. See comment under section 9101, above.

*46 U.S.C. section 121 imposes a tonnage tax on any vessel entering the United States from a foreign port if any officer of the vessel is not a U.S. citizen; and exempts from another tonnage duty unregistered vessels owned by U.S. citizens if the vessel is registered before it leaves port.

*46 U.S.C. section 221 limits vessels enjoying the benefits and privileges of a vessel of the United States to those owned by U.S. citizens or corporations, and requires that the master and all officers of such vessels be U.S. citizens.

*46 U.S.C. section 242 requires that registered staff officers--pursers, surgeons, and professional nurses--in the United States merchant marine be U.S. citizens.

*46 U.S.C. section 325 provides for the forfeiture of any licensed vessel on its transfer, in whole or in part, to a person who, at the time of transfer is not a U.S. citizen and resident.

*46 U.S.C. section 672a requires, after

June 25, 1936, all licensed officers and pilots and 75% of the crew of every U.S. vessel to be U.S. citizens.

*46 U.S.C. section 834 authorizes the Secretary of the Treasury to deny port clearance to any vessel able but refusing to receive cargo tendered by a U.S. citizen for shipment to a subsequent port of call.

*46 U.S.C. section 1132 (a) requires that all officers of vessels documented under U.S. laws be U.S. citizens and that all crew members of any cargo vessel that has received a U.S. construction or operating subsidy be U.S. citizens. Subsections (b) and (c) require any passenger vessel that has received a U.S. construction or operating subsidy to have a crew 90% of whom are U.S. citizens with the remaining 10% being stewards admitted for permanent residence or who have declared their intent to become U.S. citizens. Section 3(b) of Public Law 96-453 amends section 905 of the Merchant Marine Act, 1936, 46 U.S.C. section 1244, to add a definition of the United States that includes the Northern Mariana Islands. This definition applies throughout the Act, sections 1101-1295g of Title 46. "Citizen of the United States" also is defined, by section 1244(c), but in a way that does not necessarily preclude a reading that includes citizens of the Northern Mariana Islands within the definition. But see comment under section 1274, below, treating citizens of the Northern Mariana Islands as distinct from U.S. citizens for purposes of the Act.

*46 U.S.C. section 1151 allows U.S. citizens to receive certain ship-construction subsidies. See comment under section 1132, above.

*46 U.S.C. section 1159 allows U.S. citizens to receive certain subsidies and loans for the construction of new vessels. See comment under section 1132, above.

*46 U.S.C. section 1171 allows U.S. citizens to receive operating subsidies for certain vessels used in an "essential service of the foreign commerce" of the United States or in off-season cruises. See comment under section 1132, above.

*46 U.S.C. section 1213 (a) requires U.S. citizens to be given preference for construction-differential subsidy, operating differential subsidy, and related contracts. See comment under section 1132, above.

*46 U.S.C. section 1273 allows the Secretary of Commerce to guarantee certain ship mortgage payments for U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1274 requires that the obligation secured by the mortgage allowed by section 1273, above, be related to the construction, reconstruction, or reconditioning of a vessel owned by U.S. citizens. See comment under section 1132, above. Paragraph (a)(2), as amended by section 220(3) of Public Law 96-561, enacted December 22, 1980, allows guarantee of mortgage payments to finance the construction, reconstruction, reconditioning, or purchase of research vessels or commercial fishing vessels by citizens of the Northern Mariana Islands.

*46 U.S.C. section 1279c (a), added by section 203(a) of Public Law 96-320, the Ocean Thermal Energy Conversion Act, enacted August 3, 1980, authorizes loan guarantees for construction of commercial demonstration ocean thermal energy conversion facilities owned by U.S. citizens. See comment under section 9101 of Title 42, above.

*46 U.S.C. section 1281 requires that "American vessels," for purposes of determining eligibility for war risk insurance, be owned by U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1283 permits war risk insurance coverage to extend to, among other interests, foreign-flag vessels owned by U.S. citizens, and cargos for which U.S. citizens bear the risk of loss. See comment under section 1132, above.

*46 U.S.C. section 1295, added by section 1301 of Public Law 96-453, the Maritime Education and Training Act of 1980, enacted October 15, 1980, authorizes the Secretary of Commerce to provide maritime education and training to U.S. citizens. See comment under section 1132, above.

*46 U.S.C. section 1295b (b)(1)(A), added by section 1303(b)(1)(A) of Public Law 96-453, above, requires that nominees for appointment to the U.S. Merchant Marine Academy be U.S. citizens or nationals. The subsection also authorizes, however, nomination of residents of the Northern Mariana Islands by the Governor of the Northern Mariana Islands. Subparagraph (b)(3)(F) of this section requires U.S. citizens selected for appointment to apply for midshipman status in the U.S. Naval Reserve before being appointed. Subsection (c) authorizes the Secretary of the Navy to appoint U.S. citizens appointed as cadets at the U.S. Merchant Marine Academy as midshipmen in the U.S. Naval Reserve. Paragraph (e)(1) requires appointees who are U.S. citizens to agree to complete the course of instruction and to fulfill certain obligations after graduation. Subsection (g) authorizes conferral of a bachelor of science degree on U.S. citizens who meet certain conditions and pass an examination for a merchant marine officer's license. See comment under section 1132, above.

*46 U.S.C. section 1295c (f)(2), added by section 1304(f)(2) of Public Law 96-453, above, requires a State maritime academy, to receive certain federal subsidies, to admit a determined number of U.S. citizens from States and territories other than those supporting the academy. Paragraph (g)(1) authorizes incentive payments to U.S. citizens enrolled in State maritime academies. Subsection (h) authorizes appointment of U.S. citizens attending State maritime academies as midshipmen in the U.S. Naval Reserve. See comment under section 1132, above.

*46 U.S.C. section 1295e (a), added by section 1306(a) of Public Law 96-453, above, requires that members of the U.S. Maritime Service be U.S. citizens. See comment under section 1132, above.

*47 U.S.C. section 303 (l)(1) limits the issuance of radio station operators' licenses to U.S. citizens or nationals or to citizens of the Trust Territory of the Pacific Islands "presenting valid identity certificates issued by the High Commissioner of such Territory." On May 1, 1981, Commissioner Edward DLG. Pangelinan, in his capacity as Representative to the United States of the Commonwealth of the Northern Mariana Islands, formally requested President Reagan to exercise his authority under section 1004(a) of the Covenant to suspend this citizenship requirement as it applies to citizens of the Northern Mariana Islands until termination of the trusteeship. 47 U.S.C. section 734 (d) limits alien ownership of stock in the Communications Satellite Corporation. Amendment of section 310 to allow citizens of the Northern Mariana Islands to hold radio station licenses would cause citizens of the Northern Mariana

Islands to be treated as U.S. citizens for purposes of section 734(d).

*47 U.S.C. section 310 (b) requires that grantees or holders of broadcast, common-carrier, or aeronautical radio station licenses be U.S. citizens. On May 1, 1981 Commissioner Edward DLG. Pangelinan, in his capacity as Representative to the United States of the Commonwealth of the Northern Mariana Islands, formally requested President Reagan to exercise his authority under section 1004(a) of the Covenant to suspend this citizenship requirement as it applies to citizens of the Northern Mariana Islands until termination of the trusteeship.

*49 U.S.C. section 1301 (16) defines "citizen of the United States" to include individuals who are citizens of the United States or one of its possessions (or partnerships composed of or corporations controlled by such persons). "United States" is defined by subsection (41) to include "the several States . . . and the several Territories and possessions." Under section 502(a)(2) of the Covenant, the definition of "United States," to the extent it determines the applicability of the federal aviation program, makes the program applicable to the Northern Mariana Islands. It is not clear, however, that the definition of "citizen of the United States" is similarly expanded to include citizens of the Northern Mariana Islands. Various rights, privileges, and immunities under the federal aviation program, set out throughout chapter 20 (sections 1301-1542) of title 49, are limited to citizens of the United States, as defined by this subsection.

*49 U.S.C. section 1304 extends to all U.S. citizens a public right to freedom of transit through navigable U.S. airspace. See comment under section 1301, above.

*49 U.S.C. section 1371 (d)(4), as amended by section 9 of Public Law 95-504, the Airline Deregulation Act of 1978, enacted October 24, 1978, allows U.S. citizens operating intrastate air common carriers to establish joint services and fares with other air carriers and foreign air carriers. See comment under section 1301, above.

*49 U.S.C. section 1388 allows the Civil Aeronautics Board to grant to certain U.S. citizens certificates of public convenience and necessity for all-cargo air services. See comment under section 1301, above.

*49 U.S.C. section 1401 limits aircraft eligible for U.S. registration to those owned by U.S. citizens, by aliens lawfully admitted for permanent residence, and by certain foreign corporations organized and doing business in the United States. See comment under section 1301, above.

*49 U.S.C. section 1422 allows the Secretary of Transportation to prohibit or restrict the issuance of airman certificates to aliens.

*49 U.S.C. section 1533 allows the Secretary of Transportation to provide aviation insurance, if such insurance is not commercially available on reasonable terms and conditions, on certain cargo owned by or the risk of loss of which is on U.S. citizens as well as against other risks. See comment under section 1301, above.

Statutes relating to political and civil rights. Citizens of the Northern Mariana Islands, prior to termination of the trusteeship, should be treated as citizens of the United States for purposes of the following federal statutes protecting the political and civil rights of U.S. citizens:

*2 U.S.C. section 441e prohibits nonresident aliens from making contributions to political campaigns for Federal office.

*5 U.S.C. section 552a (a)(2) limits the protections of the Privacy Act to U.S. citizens and resident aliens.

*18 U.S.C. section 241 makes criminal conspiracies to deprive U.S. citizens of their rights. (The protection is expressly limited to U.S. citizens. Baldwin v. Franks, 120 U.S. 678 (1887).)

*18 U.S.C. section 243 makes criminal discrimination against U.S. citizens eligible for jury service on account of race, color, or previous condition of servitude.

*18 U.S.C. section 245 (b)(5) makes criminal interference or attempted interference with the rights of any U.S. citizen encouraging others to enjoy the rights to vote, to benefit from or be employed by federal programs, to serve on federal juries, or, free from racial discrimination, to receive a public education, to benefit from or be employed by a State, to use the services of a labor organization, hiring hall, or employment agency, to travel using facilities of interstate commerce, or to enjoy public accommodations.

*18 U.S.C. section 4001 (a) prohibits imprisonment or detention of U.S. citizens by the United States except pursuant to an Act of Congress.

*18 U.S.C. section 4100 (b) provides that only U.S. citizens or nationals may be transferred from foreign to U.S. jails under transfer-of-offender treaties.

*22 U.S.C. section 257 excludes U.S. citizens from the treaty jurisdiction of foreign consuls over seamen in the United States enforceable by U.S. courts. The section also requires persons specially deputized by U.S. courts to arrest seamen in aid of a foreign consul's jurisdiction to be U.S. citizens.

*22 U.S.C. section 258 requires immediate release of any seamen arrested pursuant to the treaty jurisdiction of a foreign consul if he is found to be a U.S. citizen; and prevents the enforcing court from imprisoning a foreign seaman on the application of a foreign consul if the rights and duties of a U.S. citizen are directly affected by the matter in dispute.

*22 U.S.C. section 611 (b)(2) excludes from the definition of "foreign principal," for purposes of the laws requiring registration of certain agents of foreign principals, persons who are U.S. citizens domiciled in the United States. Subsection (d) excludes from the definition of "agent of a foreign principal" certain news or press services or associations the officers and directors of which are U.S. citizens and at least 80% of which are beneficially owned by U.S. citizens.

*28 U.S.C. section 1343 gives the district courts jurisdiction over suits for damages due to the unlawful deprivation of any right or privilege of a U.S. citizen by an act in furtherance of a conspiracy to deprive the person of civil rights or, under color of State law, of any right, privilege, or immunity secured by the Constitution or any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

*28 U.S.C. section 1344 gives the district courts jurisdiction to decide certain election disputes where title to office is at issue because of the denial of the rights of U.S. citizens to vote on account of race, color, or previous condition of servitude.

*28 U.S.C. section 1391 provides that diversity of citizenship cases may be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose, but that aliens may be sued in any judicial district.

*28 U.S.C. section 1443 permits removal from State to federal courts of civil actions or criminal prosecutions (1) against any person who is denied or cannot enforce in the State court a right under any law providing for equal civil rights of all U.S. citizens or persons within U.S. jurisdiction; or (2) for an act under color of any law providing for equal rights, or a refusal to act on grounds of inconsistency with such a law.

*28 U.S.C. section 1861 provides, in part, that it is "the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose." See comment under section 1865, below.

*28 U.S.C. section 1862 provides that no citizen shall be excluded from grand or petit jury service on account of race, color, religion, sex, national origin, or economic status. See comment under section 1865, below.

*28 U.S.C. section 1863 provides that a district court's plan for random jury selection, if it provides for a jury commission, shall provide for the appointment of a citizen or citizens to that commission.

*28 U.S.C. section 1865 requires that jurors be citizens of the United States. Presidential

Proclamation 4568, dated May 9, 1978, suspends until termination of the trusteeship application of this requirement to jury service in the District Court for the Northern Mariana Islands, but does not affect its application in other federal courts.

*33 U.S.C. section 1365 allows "any citizen" to file certain civil actions to enforce the Federal Water Pollution Control Act. Most citizen-suit provisions permit "any person" to file suit. This provision might be given a similar construction.

*42 U.S.C. section 1971 (a)(1) declares the right of all U.S. citizens to vote in public elections without distinction of race, color, or previous condition of servitude.

*42 U.S.C. section 1973 prohibits the use of voting qualifications or prerequisites to deny or abridge the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group.

*42 U.S.C. section 1973a (b) requires courts, on application of the Attorney General or an aggrieved person, to set aside the use of tests or devices used in violation of section 1973, above.

*42 U.S.C. section 1973b provides for suspension of literacy tests for voting by U.S. citizens in specified circumstances and guarantees voting rights of U.S. citizens who are members of language minorities.

*42 U.S.C. section 1973h (a) declares that the constitutional right of citizens to vote is abridged by required payment of poll taxes as a precondition to voting.

*42 U.S.C. section 1973aa (a) prohibits denial of the right of a U.S. citizen to vote in any Federal, State, or local election through use of a literacy or educational test, a requirement of good moral character, or by proving qualifications through the voucher of other persons.

42 U.S.C. section 1973aa-1a sets forth various requirements to enforce the rights of citizens of language minorities to participate in the electoral process.

**42 U.S.C. section 1975c* authorizes the Civil Rights Commission to investigate denial of the right of U.S. citizens to vote by reason of fraud or discrimination.

**42 U.S.C. section 1983* provides a remedy for damages to any U.S. citizen or person within the jurisdiction of the United States denied, under color of State or Territorial law, any rights, privileges, or immunities secured by the Constitution or laws of the United States. Under the Trusteeship Agreement the United States has "full powers of . . . jurisdiction" over the Northern Mariana Islands, so the remedy afforded by this section may already be available in the Northern Mariana Islands. But see *Thompson v. Kleppe*, 424 F. Supp. 1263 (D. Hawaii 1976), holding the remedy unavailable because the Trust Territory is not a State or Territory.

**42 U.S.C. section 1985* provides a remedy for damages to any U.S. citizen injured by a conspiracy to obstruct justice with the intent to deny him the equal protection of the laws.

**42 U.S.C. section 2000e-1* provides that the equal employment opportunities laws do not apply to employers with respect to employment of aliens outside any state. "State" is defined to include the several States and Guam. 42 U.S.C. section 2000e(i). Under section 502(a)(2) of the Covenant, "State" would also include the Northern Mariana Islands. This section would thus not except employment of aliens in the Northern Mariana Islands from the equal employment opportunity laws. Note, however, that discrimination on the basis of citizenship is not forbidden by the equal employment opportunity laws. See sections 2000e-2 and 2000e-3 of Title 42; *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973).

The equal employment opportunity laws do apply to employers with respect to employment of U.S. citizens outside of any state.

**42 U.S.C. section 2000e-16* prohibits the Federal Government from discriminating in employment on the grounds of race, color, religion, sex, or national origin except with regard to aliens employed outside the United States. "State" under the law includes the Northern Mariana Islands. See comment under section

2000e-1, above. The law thus bars federal discrimination on the forbidden grounds in the Northern Mariana Islands, but does not bar federal discrimination outside of the United States against citizens of the Northern Mariana Islands.

*48 U.S.C. section 737 protects the rights, privileges, and immunities of U.S. citizens in Puerto Rico to the same extent as if Puerto Rico were a State.

*50 U.S.C. section 1801 (i), added by section 101(i) of Public Law 95-511, the Foreign Intelligence Surveillance Act of 1978, enacted October 25, 1978, defines "United States person" for purposes of protections afforded by the Act as including U.S. citizens and aliens lawfully admitted for permanent residence. "United States" is defined by subsection (j) to include, when used in geographical sense, the Trust Territory of the Pacific Islands.

*50 U.S.C. App. section 460 (b)(3) forbids denial to any U.S. citizen of membership on a selective service local board or appeal board on account of sex; and requires members of local and appeal boards to be U.S. citizens.

*50 U.S.C. App. section 514 extends to U.S. citizens serving in the armed forces of a U.S. wartime ally the benefits of the Soldiers' and Sailors' Relief Act, suspending civil legal proceedings against certain persons in the U.S. armed forces.

*50 U.S.C. App. section 572 extends to U.S. citizens serving in the armed forces of a U.S. wartime ally certain rights and exemptions related to their tax liabilities.

Statutes relating to federal programs and benefits. Various federal statutes condition eligibility to participate in particular federal programs or to receive particular federal benefits on the United States citizenship of the participant or beneficiary. At any given time, there probably will be few otherwise-eligible citizens of the Northern Mariana Islands denied participation in these programs or receipt of these benefits because they are not U.S. citizens. The individual who is denied such participation or benefits, however, may well regard such a denial as an affront inconsistent with the spirit of the Covenant. Citizens of the Northern Mariana Islands, prior to termination of the trusteeship, should be considered as citizens of the United States for purposes of these federal statutes:

> *7 U.S.C. section 2015 (f) excludes most aliens not lawfully admitted for permanent residence in the United States from participation in the food stamp program.
>
> *10 U.S.C. section 2545 (a), added by Public Law 95-492, enacted October 20, 1978, authorizes the Secretary of Defense to provide transportation on a reimbursable basis to U.S. citizen delegates coming from outside the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America.
>
> *12 U.S.C. section 1813 (m)(2), as added by section 6(c)(4) of Public Law 95-369, the International Banking Act of 1978, enacted September 17, 1978, includes within the term "insured deposit," for purposes of the laws insuring bank deposits, deposits by U.S. citizens or residents in U.S. branches of foreign banks.
>
> *14 U.S.C. section 500 (b) authorizes the award of life-saving medals outside U.S. waters if the rescuer or the person rescued is a U.S. citizen or if the rescue is from a vessel or aircraft owned or operated by U.S. citizens.
>
> *16 U.S.C. section 4601-6a (a)(4) authorizes issuance of free permits to enter national parks and recreation areas to persons over sixty-two years of age who are U.S. citizens or domiciliaries. Paragraph (5), added by section 9(2) of Public Law 96-344, enacted September 8, 1980, offers the free permit to blind or permanently disabled persons who are U.S. citizens or domiciliaries.
>
> *22 U.S.C. section 2701, added by section 2201 of Public Law 96-465, above, authorizes the Secretary to

provide educational assistance to meet the needs of children of U.S. citizens abroad who are engaged in carrying out Government activities.

*29 U.S.C. section 834 (e), added by section 2 of Public Law 95-524, the Comprehensive Employment and Training Act Amendments of 1978, enacted October 27, 1978, forbids discrimination against participants in programs under the Act but limits participation to U.S. citizens and nationals, lawfully admitted permanent resident aliens, and lawfully admitted refugees and parolees. "State" is defined, in section 802(25) of Title 29, to include the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

*29 U.S.C. section 993 (b)(1)(c), added by section 2 of Public Law 95-524, above, limits membership in the Young Adult Conservation Corps to citizens or lawful permanent residents of the United States or lawfully admitted refugees or parolees. The term "State" as used in this section is defined to include the Northern Mariana Islands. 29 U.S.C.A. section 802(25) (Supp. 1980). Section 802 does not define "United States". Nonetheless, the applicability of the law to the Northern Mariana Islands requires treatment of citizens of the Northern Mariana Islands as U.S. citizens to accomplish the purposes of the law in the Northern Mariana Islands. The Young Adult Conservation Corps in fact enrolls citizens of the Northern Mariana Islands in the Northern Mariana Islands. A technical amendment is advisable, particularly to clarify the eligibility of citizens of the Northern Mariana Islands who desire to enroll at locations outside the Northern Mariana Islands.

*33 U.S.C. section 909 (g) limits foreign-resident beneficiaries to specified relatives of aliens for whom death benefits are paid under the Longshoremen's and Harbor Workers' Compensation Act.

*38 U.S.C. section 624 (b) allows the Veterans' Administration to furnish necessary medical care for the service-connected disability of an otherwise eligible veteran who is a U.S. citizen sojourning or residing aborad.

*42 U.S.C. section 295g-8 (d)(12) authorizes grants for the training of U.S. citizens from foreign health professions schools to enable them to enroll in residency programs in the United States.

*42 U.S.C. section 302 (b)(3) requires States receiving federal grants for old-age assistance and medical assistance to the aged to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section was repealed effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. Public Law 92-603, section 303(a), (b), 86 Stat. 1484 (1972). While the section is thus not applicable to the Northern Mariana Islands, rights of citizens of the Northern Mariana Islands residing in Guam, Puerto Rico, or the Virgin Islands would be expanded were they treated as U.S. citizens.

*42 U.S.C. section 304 halts payments for old-age assistance or medical assistance to the aged if a State alters a previously-approved plan so the citizenship condition set forth in section 302(b), above, no longer obtains. The repeal discussed under section 302(b) also includes this section.

*42 U.S.C. section 402 (t) suspends old-age, survivors, and disability insurance benefits to aliens who are outside the United States unless they are citizens of a country which allows equivalent benefits to qualified U.S. citizens outside that country, except in certain specified circumstances.

*42 U.S.C. section 426a (a)(4) allows certain U.S. citizens and residents over 65 to receive hospital insurance benefits although otherwise not entitled to those benefits.

*42 U.S.C. section 428 (a)(3) allows certain uninsured U.S. citizens and residents over 72 to receive specified monthly cash benefits. The benefits are not available if the person is receiving benefits under Supplemental Security Income program, and may not be paid to a person residing outside the 50 States and the District of Columbia.

*42 U.S.C. section 1202 (b)(2) requires States receiving federal grants for aid to the blind to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section was repealed effective

January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. Public Law 92-603, section 303(a), (b), 86 Stat. 1484 (1972). See comment regarding section 302(b) of title 42, above.

*42 U.S.C. section 1204 halts payments for aid to the blind if a State alters a previously-approved plan so the citizenship condition set forth in section 1202(b), above, no longer obtains. The repeal discussed under section 1202(b) also includes this section.

*42 U.S.C. section 1352 (b)(2) requires States receiving grants for aid to the permanently and totally disabled to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens. The subchapter containing this section was repealed effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. Public Law 92-603, section 303(a), (b), 86 Stat. 1484 (1972). See comment regarding section 302(b) of title 42, above.

*42 U.S.C. section 1354 halts payments for aid to the permanently and totally disabled if a State alters a previously-approved plan so the citizenship condition set forth in section 1352(b), above, no longer obtains. The repeal discussed under section 1352(b) also includes this section.

*42 U.S.C. section 1382c (a)(1)(B) requires that an "aged, blind, or disabled individual" eligible for supplemental security income assistance be a resident of the United States and a U.S. citizen or a permanent resident alien. Paragraph (f)(3), added by section 504 of Public Law 96-265, the Social Security Disability Amendments, enacted June 9, 1980, provides that, for purposes of determining the eligibility of an alien, certain income and resources of the alien's sponsor (if any) and the sponsor's spouse are deemed income and resources of the alien.

Section 502(a)(1) of the Covenant provides that the chapter containing this section, Title XVI of the Social Security Act "shall apply to the Northern Mariana Islands . . . as it applies to the several States." Citizens of the Northern Mariana Islands in the Northern Mariana Islands already receive supplemental security income.

*42 U.S.C. section 1395i-2 (a)(3) limits to residents of the United States who are citizens or lawfully admitted permanent resident aliens who have resided in the United States for five years, eligibility *for aged and disabled hospital* insurance benefits for certain otherwise uninsured individuals.

*42 U.S.C. section 1395o (2) limits eligibility for supplementary medical insurance benefits for the aged and disabled to residents of the United States who are U.S. citizens or lawfully admitted permanent resident aliens who have resided in the United States for five years.

*42 U.S.C. section 1396a (b)(4) requires States receiving medicaid grants to impose no citizenship requirement on eligibility for assistance that would exclude U.S. citizens.

*42 U.S.C. section 1652 (b) limits recipients of compensation for disability or death of nonresident aliens employed by defense contractors at U.S military bases outside the United States to specified dependents and allows or requires the Secretary of Labor to pay one-half the compensation benefits in a lump sum. The exclusive remedy for compensation for injury to or death of persons employed at military bases on Guam, in the Northern Mariana Islands, or in the Trust Territory is provided by this law. See section 1651(a) and (c) of title 42.

*42 U.S.C. section 1701 (c) limits benefits payable to surviving dependents on the death outside the United States of an employee of a contractor with the United States if that employee is neither a U.S. citizen nor a resident of the United States or Canada.

*42 U.S.C. section 1869 limits award of National Science Foundation scholarships and graduate fellowships to U.S. citizens or nationals.

*42 U.S.C. section 1881 (c) limits award of the National Medal of Science to persons who are U.S. citizens or nationals or who are lawfully admitted permanent resident aliens who have filed applications for petitions for naturalization.

*42 U.S.C. section 1922 limits certain Department of Justice youth medals for character or service to U.S. citizens.

Statutory construction. Many federal statutes already apply within the Northern Mariana Islands. Some statutes are applicable within the Northern Mariana Islands by their own specific terms; others have been made applicable by provisions of the Covenant. Occasionally, such statutes limit benefits, rights, privileges, or immunities created by the statute to citizens of the United States. Legislation should be enacted to ensure that citizens of the Northern Mariana Islands are treated as citizens of the United States for purposes of any requirement of United States citizenship in any federal statute applicable in or to the Northern Mariana Islands.

Examples of statutes applicable within the Northern Mariana Islands which require persons to be citizens of the United States in order to receive a benefit, right, privilege, or immunity pursuant to the statute are the Merchant Marine Act of 1936, as amended; the Ocean Thermal Energy Conversion Act of 1980; and the Communications Act of 1934.

—The Merchant Marine Act of 1936, as amended. The Merchant Marine Act of 1936*, as amended from time to time, contains a wide variety of provisions encouraging and strengthening the United States maritime and shipping industry. The Act contains a number of citizenship requirements. For example, only U.S. citizens are eligible to receive certain ship-construction subsidies authorized by the law.*

---

*Act of June 29, 1936, c.858, 49 Stat. 1985, 46 U.S.C. sections 1101 et seq.

Section 3(b) of Public Law 96-453**, enacted in October 1980, amends section 905 of the Merchant Act*** to add a definition of the United States that specifically includes the Northern Mariana Islands. This definition applies throughout the Act. Section 905 of the Act also defines "citizen of the United States", but without sufficient precision for easy determination of whether citizens of the Northern Mariana Islands are within or without the definition. The broader question is whether expansion of the definition of "United States" to include the Northern Mariana Islands can be read also to expand "citizens of the United States" to include citizens of the Northern Mariana Islands. Sound arguments can be made on either side of that question.* When sound arguments can be made on both sides of a question of statutory construction, the statute is ambiguous.

---

*Sec. 501, as amended (46 U.S.C. section 1151).

**94 Stat. 1977.

***46 U.S.C. section 1244.

--The Ocean Thermal Energy Conversion Act of 1980. The Ocean Thermal Energy Conversion (OTEC) Act of 1980** is directed toward a subject of much contemporary interest in the Northern Mariana Islands, the generation of electrical energy through exploitation of temperature differences between surface and subsurface layers of the ocean. While subsection (15) of section 3 of the Act*** defines "State" to include the Northern Mariana Islands, subsection (18) of the same section+ defines "United States citizen" so as apparently to exclude citizens of the Northern Mariana Islands. In order to obtain a license to own, construct, or operate an OTEC facility under the Act, it is necessary to be a United States citizen.* Qualified United States citizens are entitled to such a license.** OTEC facilities licensed pursuant to the Act, subject to certain exceptions, may employ only United States citizens or aliens lawfully admitted for permanent residence.***

---

*Pro: Extension of a statute to a geographic area implies that most of the population of that area is expected to be able to benefit from the statute. Congress should be presumed to have intended to exercise its indisputable power to include citizens of the Northern Mariana Islands among citizens of the United States in order to accomplish the purposes of the statute.

Contra: "Citizens of the United States" is a term with specific meaning, defined by the Fourteenth Amendment to the United States Constitution. Citizens of the Northern Mariana Islands are not yet citizens of the United States within the meaning of the Fourteenth Amendment. While Congress certainly may define the term "citizens of the United States" to include citizens of the Northern Mariana Islands, it should not be presumed to have done so in the absence of specific language to that effect.

**Public Law 96-320, 94 Stat. 974, enacted August 3, 1980; 42 U.S.C. sections 9101 et seq.

***42 U.S.C. section 9102(15).

+42 U.S.C. section 9102(18).

--The Communications Act of 1934. The Communications Act of 1934, as amended from time to time,+ regulates communication by wire and radio and establishes the Federal Communications Commission. The Act applies to wire or radio communication originating or received in the United States.++ "United States" is defined to include "the several States and Territories, the District of Columbia, and the possessions of the United States."+++ The Act thus applies to wire or radio communications originating or received in the several States and Guam. Section 502(a)(2) of the Covenant provides that laws in existence on January 9, 1978, such as the Communications Act of 1934, will apply to the Northern Mariana Islands if they apply to Guam and the several States. Thus, by virtue of section 502(a)(2), the Communications Act of 1934 applies to wire or radio communications originating or received in the Northern Mariana Islands.

---

*Section 101(a), 42 U.S.C section 9111(a).

**Section 101(f), 42 U.S.C. section 9111(f).

***Section 108(e)(2)(C), 42 U.S.C. section 9118(e)(2)(C).

+Act of June 19, 1934, c.652, 48 Stat. 1064, 47 U.S.C. section 151 *et seq*.

++Section 2, 47 U.S.C. section 152.

+++Section 3(g), 47 U.S.C. section 153(g).

The Act forbids the granting or holding of a radio station license by an alien.* At the present time, citizens of the Northern Mariana Islands are aliens ineligible to hold radio station licenses under the Act, even though the Act clearly applies within the Northern Mariana Islands.

* * *

In every instance where statutes have been found to be applicable in the Northern Mariana Islands, but, at least arguably, to deny a benefit, right, privilege, or immunity to citizens of the Northern Mariana Islands, specific legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of that statute has been recommended separately from this general recommendation. Thus, the Merchant Marine Act of 1936, as amended, the Ocean Thermal Energy Conversion Act of 1980, and the Communications Act of 1934, all used as examples of the type of statute to which this general recommendation is directed, are each included within other specific recommendations for legislation in this report. The legislation here recommended would cover similar statutes for which, through oversight, no specific recommendation has been made. The legislation here recommended would also apply to statutes enacted in the future.*

---

*Section 310, 47 U.S.C. section 310(b)(1).

Legislation should be enacted to clarify and affirm the present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands.

The statute. The Federal Tort Claims Act allows actions for money damages against the United States "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of any federal employee "while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant. . . ." Without the Federal Tort Claims Act, a person injured by, for example, a negligently-driven United States Government vehicle, could not file a court action for damages against the United States, but could recover from the United States only through a private bill enacted by the U.S. Congress.

---

*Both the Ocean Thermal Energy Conversion Act of 1980 and the 1980 amendment to the Merchant Marine Act of 1936 were enacted well after enactment of the Covenant.

Present applicability. In 1948 a federal court specifically concluded that no remedy under the Federal Tort Claims Act was available to persons injured in the Northern Mariana Islands as the result of a federal employee's negligence. In Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y.), the court held that a provision of the Act excluding from its operation claims arising in a foreign country, now section 2680(k) of title 28, U.S.C., barred recovery for a claim arising on Saipan, since Saipan was part of an area over which the United States does not claim sovereignty. Although the Trust Territory of the Pacific Islands had not yet been created at the time the injury giving rise to the Brunell claim occurred, the logic of the Brunell court was applied subsequently to bar recovery on a claim arising in the Trust Territory (at Kwajalein) in Callas v. United States, 152 F. Supp. 17 (E.D.N.Y. 1957), affirmed, 253 F.2d 838 (2d Cir. 1958), cert. denied, 357 U.S. 936 (1958). See also United States v. Spelar, 338 U.S. 217 (1949); Comment, International Law--Trusteeship as Foreign Country--Status of Kwajalein under the Federal Tort Claims Act, 4 Villanova Law Review 149 (1958).

Despite the Brunell and Callas precedents, there is an argument that the Northern Mariana Islands is no longer a foreign country for purposes of the Federal Tort Claims Act. Section 502(a)(2) of the Covenant makes applicable to the Northern Mariana Islands federal laws applicable to Guam and the fifty States. The Federal Tort Claims Act was held available to claimants injured on Guam in Brandt v. United States, 110 F. Supp. 627 (D. Guam 1953), and is clearly applicable in the fifty States.

There is, however, a general principle that statutes waiving the sovereign immunity of the United States from suit must be strictly construed.

> [L]imitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied.

Soriano v. United States, 352 U.S. 270, 276 (1957). See also United States v. Sherwood, 312 U.S. 584, 590 (1941). Other courts have held that a federal district court cannot hear any claim against the United States unless Congress specifically intended the court to have the power to hear that type of claim. See, for example, Ray v. United States, 402 F. Supp. 40, 42 (D.S.C. 1975). It would be difficult for a claimant to establish that Congress specifically intended to exclude claims arising in the Northern Mariana Islands from the Federal Tort Claims Act exception for claims arising in a foreign country.

There are also judicial decisions which construe the Federal Tort Claims Act in a liberal, expansive fashion. See, for example, United States v. Muniz, 370 U.S. 150 (1963); Rayonier, Inc. v. United States, 352 U.S. 315 (1957); and Kielwein v. United States, 540 F.2d 676, 681 (4th Cir. 1976), cert. denied, 429 U.S. 679 (1976).

In summary, there are arguments for and against the conclusion that the Federal Tort Claims Act presently provides a remedy for claims arising in the Northern Mariana Islands. In favor of the conclusion are arguments based on the Act's applicability in Guam and the fifty States and court decisions giving the Act an expansive construction. Against the conclusion are the Brunell and Callas precedents and the principle, supported by a number of judicial decisions, that waivers of sovereign immunity by the United States are not lightly to be implied.

Discussion. There is no reason the Federal Tort Claims Act should not apply now to claims arising in the Northern Mariana Islands. The Act will certainly apply at the conclusion of the trusteeship, when there will no longer be any grounds for considering the Northern Mariana Islands a foreign country. In the meantime, the federal presence in the islands increases and the likelihood of injury due to negligence of a federal employee also increases. A person so injured should be able to file a claim under the Federal Tort Claims Act knowing the Act does provide a remedy for injuries occurring in the Northern Mariana Islands.

Legislation should be enacted to exclude the Northern Mariana Islands from provisions of the Clean Air Act governing motor vehicle emission and fuel standards. The Administrator of the Environmental Protection Agency should be required to exempt the Northern Mariana Islands from any other requirement of the Clean Air Act on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance.

The statute. The Clean Air Act seeks to protect public health by preventing or controlling air pollution. The Act "affects virtually all industrial and transportation activity, the production and use of energy, and real estate development." 1977 Congressional Quarterly Almanac 627.

A prominent federal role under the Act is performed by the United States Environmental Protection Agency (the EPA). The EPA sets standards for maximum concentrations of various airborne pollutants believed harmful to health or the environment. The States, under EPA oversight, are responsible for formulating and enforcing rules to prevent airborne pollutants from exceeding concentrations allowed by the EPA.

The automobile is an important source of air pollution nationally, and provisions directed at controlling automobile exhaust emissions are an important part of the Clean Air Act.

No funds are authorized to be appropriated for implementation of the Clean Air Act beyond September 30, 1981. See section 327 of the Act, 42 U.S.C. section 7626. The National Commission on Air Quality issued a report, "To Breathe Clean Air," in March 1981, which recommends a number of changes in the Act. President Reagan has sent Congress a set of proposed principles intended to guide drafting of reauthorizing legislation. "Changes proposed for Clean Air Act," New York Times, August 6, 1981, p. A-11. (Neither the report of the National Commission nor President Reagan's principles touch directly on the special situation of the Northern Mariana Islands.*) Significant revisions in the Act were not made before September 30, 1981, when the existing authorization expired, although funding has been extended under a continuing resolution of Congress.

---

*The National Association of Attorneys General, however, has recommended that the Clean Air Act be amended to reflect the unique situation of the Northern Mariana Islands and other American insular areas (including Hawaii). The Association notes that "[s]trategies for air pollution control necessary to protect the health and welfare of persons residing in the continental United States are often unnecessarily harsh and restrictive when applied to islands that are separated by hundreds or thousands of miles from other populous areas." National Association of Attorneys General, Report to the United States Congress on the Reauthorization of the Clean Air Act (undated [1981], at pages 16-17).

Present applicability. The Clean Air Act was amended in 1977 to apply expressly to the Northern Mariana Islands. Section 218(c) of Public Law 95-95, 91 Stat. 761, amended the definition of "State," as that term is used in the Clean Air Act, to include the Northern Mariana Islands. The clear intent of this amendment was to include the Northern Mariana Islands within the coverage of the Act. H.Rep. No. 95-294, at p.341 (1977). No light is shed on why the 1977 amendments extended the Act to the Northern Mariana Islands by the various congressional reports on the legislation. See *id*. at 341, 436; S.Rep. No. 95-127, at 94 (1977); and H.Rep. No. 95-564, at 83, 195 (1977) (conference report).

The term "State," as used in the Act, is defined to include as well the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. Section 302(d), 42 U.S.C. section 7602(d). "States" have particular responsibilities under some provisions of the Act. See, for example, section 107(a), 42 U.S.C. section 7407(a) (State responsibility for assuring air quality). Although not all other provisions of the statute use the term "State," a definition of "State" or "United States" to include a particular jurisdiction for purposes of a statute is strong evidence of congressional intent that the statute be applicable in that jurisdiction in all respects. There is no doubt that the Clean Air Act is applicable in its entirety to Puerto Rico, the Virgin Islands, Guam, and American Samoa, as well as to the Northern Mariana Islands.

Discussion. Application of the Clean Air Act to the Northern Mariana Islands has caused some controversy. Compliance with the Act costs money, but is seen to yield little benefit because of the absence of significant air pollution in the Northern Mariana Islands. The two principal costs associated with compliance arise from requirements in the Act, and in regulations issued thereunder, aimed at controlling automobile exhaust emissions: (1) the requirement that gasoline retailers--filling stations--selling specified minimum quantities of gasoline offer unleaded gasoline for sale; and (2) the requirement that automobiles imported into the Northern Mariana Islands meet EPA emission control standards. The costs imposed by these federal requirements are such that the requirements should be eliminated, leaving any regulation of motor vehicle emissions to local legislation by the Northern Mariana Islands. Each of the requirements is examined in more detail below.

Other requirements imposed by the Clean Air Act do not appear to be of major immediate concern in the Northern Mariana Islands, but might become issues in the future.

--Air quality in the Northern Mariana Islands. The Northern Mariana Islands lie in a northeasterly trade wind belt and experience winds from the northeast almost constantly. Due to the great distances the trade winds travel over the ocean uninterrupted by major land masses, they are remarkably steady, averaging at least 10 knots day in and day out through most of the year. See generally George R. Rumney, Climatology and the World's Climates 637 (1968); United States Weather Bureau, Atlas of Climatic Charts of the Oceans, charts 27-30 (1938).

The total population of the Northern Mariana Islands is less than 20,000 persons. Air pollution attributable to normal human activity is consequently minimal.

Industrial sources of air pollution are virtually non-existent in the Northern Mariana Islands. The power plant on Saipan, the most populous of the islands, was placed in operation in May 1980, and is considered one of the most modern power generation plants in the Pacific.

The total number of motor vehicles in the Northern Mariana Islands is less than 10,000, most of which are on Saipan. The most heavily-travelled highways on Saipan run generally north-south on the western side of the island. Consequently, most airborne automobile emissions are blown out to sea.

The only other potentially significant contributors to air pollution in the Northern Mariana Islands are batching plants where asphalt is occasionally prepared for repairs or resurfacing the limited island systems of paved roads.

Because of the expense involved, no study monitoring air quality in the Northern Mariana Islands has been performed to date. A modelling study, however, indicates that, for the next ten to twenty years, air quality in the Northern Mariana Islands will be better than that required by the EPA's national air quality standards. Engineering-Science, Suggested Air Pollution Implementation Plan for the Commonwealth of Northern Mariana Islands (1980), at page III-1. The EPA has determined that all of the Northern Mariana Islands betters national air quality standards for total suspended particulates and for sulfur dioxide. 40 C.F.R. section 81.354 (1981). For ozone, carbon monoxide, and nitrogen dioxide, the EPA has designated the Northern Mariana Islands as "cannot be classified or better than national standards." Id.

What little air pollution exists in the Northern Mariana Islands has no significant effect on any other jurisdiction. The nearest inhabited lands to the west of the Northern Mariana Islands (the direction of the prevailing trade winds) are the Philippine Islands, more than 1300 miles away across open ocean. Indeed, except for the island of Guam to the south, great distances of uninhabited ocean separate the Northern Mariana Islands from any neighbor.

--The unleaded gasoline requirements. Section 80.22 of the EPA's regulations, 40 C.F.R. section 80.22 (1981), issued under authority of sections 211 and 301 of the Act, 42 U.S.C. sections 7545 and 7601, requires gasoline retail outlets which sold 200,000 or more gallons (or, if in a rural area, 150,000 or more gallons) of gasoline in any year since 1971 to offer for sale unleaded gasoline. This requirement, which became effective nationally in 1973, was based on a determination by the Administrator of the EPA:

> that emission products of lead and phosphorus additives would impair to a significant degree the performance of emission control systems which include catalytic converters that motor vehicle manufacturers are developing to meet the 1975-76 motor vehicle emission standards and that are likely to be in general use if lead and phosphorus additives are controlled or prohibited for use in certain motor vehicle gasolines.

38 Fed. Reg. 1254 (January 10, 1973). The Administrator further determined that:

> without regulatory action requiring retail outlets to market at least one grade of such gasoline, availability of that product to the general public in all areas of the country would be uncertain and may not be sufficient to assure the protection of catalytic control devices. Id.

Catalytic converters are now the principal devices used by most automobile manufacturers to meet EPA's emission control standards.

Lead-free gasoline costs more per gallon than otherwise-equivalent leaded gasoline. Mobil Oil Micronesia, Inc. ("Mobil"), the principal distributor of petroleum products in the Northern Mariana Islands, as of October 1, 1981, charged 14.1 cents more per gallon for unleaded gasoline. Mobil estimates that, based on the 14.1 cents price differential and 1980 consumption statistics, the use of unleaded gasoline by all automobiles in the Northern Mariana Islands would cost $380,150 more than if only leaded gasoline were used. If only 50% of the gasoline consumed were unleaded, the additional cost would be $190,075. (Use of lead-free gasoline, however, results in savings of several cents per gallon in maintenance over the lifetime of an automobile. Spark plugs, exhaust systems, and carburetors need to be replaced less frequently. D.S. Gray & A.G. Azhari, "Saving Maintenance Dollars with Lead-Free Gasoline" (1972), reprinted in Hearings on Automotive Lead Emissions before a panel of the Subcommittee on Environmental Pollution of the Senate Committee on Public Works, 93d Cong., 2d Sess., at 185, 186 (1974).)

Mobil stands ready to distribute unleaded gasoline to local filling stations. Few, however, of the local filling stations are equipped with the separate tanks and pumps necessary to dispense unleaded gasoline. According to Mobil, new gasoline storage tanks cost in the Northern Mariana Islands about $8,000 installed. New pumps cost an additional $2,400 installed. If, say, five stations on Saipan install a total of five tanks and two pumps and an additional two stations on the islands of Tinian and Rota each install one tank and one pump, the total investment required in the Northern Mariana Islands will exceed $65,000. This investment is only required if automobiles imported into the Northern Mariana Islands must be equipped with catalytic convertors.

Several filling stations in the Northern Mariana Islands are probably of marginal profitability. The investment required to comply with the Clean Air Act may be sufficient to force one or more of them out of business. Further, investment returns from required improvements will be minimal due to the small volume of unleaded gasoline which will be sold. Service stations may experience a drop in revenues because of their limited storage capacity. Unleaded fuel will sell slowly because of its high price and the limited demand for it. But available storage capacity for leaded gas will be cut in half, reducing the total volume of gasoline which can be sold readily. Increasing frequency of gasoline deliveries by suppliers will further increase the cost of doing business.

--The motor vehicle import requirements. Section 203 of the Clean Air Act, 42 U.S.C. section 7522, requires motor vehicles imported into the United States to conform to the EPA's emission standards. Although some automobiles imported into the Northern Mariana Islands before the 1982 model year conformed to these standards, the requirement was not rigorously enforced because of the unavailability of unleaded gasoline in the Northern Mariana Islands. Most motor vehicles imported into the Northern Mariana Islands before 1981 came from Japan and were not equipped with catalytic convertors. (All 1982 passenger vehicles for sale in the Northern Mariana Islands meet Clean Air Act standards.)

--Need for early action. Because the Clean Air Act clearly applies to the Northern Mariana Islands and because, for good reasons, it has not been rigorously enforced, an undesirable climate of uncertainty has been created: Automobile importers in the Northern Mariana Islands are reluctant to import complying vehicles because unleaded gasoline is not generally available and because they recognize that arguments for exemption of the Northern Mariana Islands from the Act's requirements are strong. At the same time, they do not want to risk the substantial penalties imposed by the Act for importation of vehicles not meeting emission standards. See section 205 of the Act, 42 U.S.C. section 7524. The automobile importer's uncertainties are compounded by the necessity of reacting to decisions made by competing automobile importers in the face of the same uncertainties.

The situation of gasoline retailers in the Northern Mariana Islands is no better. Few filling stations want to make the necessary investment in storage tanks and equipment for unleaded gasoline if automobiles using leaded gasoline may be imported into the Northern Mariana Islands. If automobiles using leaded gasoline may be imported, it is likely that their somewhat lower price will make automobiles using only unleaded gasoline relatively rare on the roads of the Northern Mariana Islands. As a consequence, there would be little volume and little profit in the retail sale of unleaded gasoline. Operators of filling stations also realize arguments for exemption of the Northern Mariana Islands from the Act's requirements are strong. And they too know they are subject to substantial penalties for noncompliance. See 40 C.F.R. section 80.5 (1980). Their uncertainties, like those of the automobile importers, are compounded by reactions of their competitors to the same uncertainties.

Early action on this recommendation is desirable to eliminate the present uncertainties faced by automobile importers and filling-station operators in the Northern Mariana Islands.

--Other requirements of the Clean Air Act. No other requirements of the Clean Air Act appear to be causing problems in the Northern Mariana Islands at the present time. Given the generally pristine air quality now found in the Northern Mariana Islands, some persons have argued that no part of the Act should apply in the Northern Mariana Islands. Future developments, however, might adversely affect that air quality if the requirements of the Act do not apply. Indeed, to exempt the Northern Mariana Islands from the Act's standards for air pollution sources other than motor vehicles could attract polluting industries from other areas where standards are more stringent. Although attraction of new industry might further economic development of the Northern Mariana Islands, a polluting industry would adversely affect not only public health, but also tourism, currently the most important industry in the Northern Mariana Islands.

While Clean Air Act standards for emissions from sources other than motor vehicles should continue to apply in the Northern Mariana Islands, future situations may develop where enforcement of particular provisions in the Act (or in regulations issued pursuant to the Act) is counterproductive. Accordingly, the Administrator of the Environmental Protection Agency should be required to exempt the Northern Mariana Islands from any requirement imposed by the Act (or by regulations issued thereunder) on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement are significantly outweighed by the costs of compliance. This provision retains the presumption that the Act normally will apply in the Northern Mariana Islands to emissions from sources other than motor vehicles, and places potential polluters on notice that they are subject to the requirements of the Act. At the same time, an exemption from particular requirements of the Act is permitted if the costs of compliance with those requirements can be shown to significantly outweigh the benefits attributable to compliance. The power to determine whether the Northern Mariana Islands should be exempted from a particular requirement of the Act is lodged in the Governor of the Northern Mariana Islands as the official familiar with the special characteristics of the Northern Mariana Islands best able to act on a request for exemption with concern for all interests involved and with reasonable dispatch.

PROPOSED LEGISLATIVE LANGUAGE

Rights and privileges of United States citizenship.

The following language, if enacted by the Congress of the United States, would implement the Commssion's recommendation that citizens of the Northern Mariana Islands be treated as citizens of the United States prior to termination of the trusteeship for purposes of specified federal statutes:

> An Act to require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular federal statutes.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall not bar the United States of America from paying compensation to or employing citizens of the Northern Mariana Islands.
>
> Sec. 2. Statutes relating to the uniformed services. In accordance with the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241), a citizen of the Northern Mariana Islands who declares in writing an intent to become a citizen, and not a national, of the United States of America upon full implementation of such Covenant shall be deemed a citizen of the United States of America for purposes of:
>
> (a) Sections 311, 510, 532, 591, 2004, 2031, 2104, 2107, 2122, 4348, 6019, 6911, 6958, 6959, 8257, and 9348 of title 10, United States Code;
>
> (b) Section 195, 371, 706, and 823 of title 14, United States Code; and

(c) Section 313 of title 32, United States Code.

Sec. 3. Statutes relating to the federal employment. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of

(a) Sections 5342, 5343, 5561, 5595, 5912, 5922, 6301, 7103, 7532, 8171, 8501, 8701, and 8901 of title 5, United States Code;

(b) Section 22 of title 13, United States Code;

(c) Section 2 of Public Law 86-91, 73 Stat. 213 (20 U.S.C. section 901);

(d) Sections 301-03 of the Act of January 27, 1943, c.36, 62 Stat. 6, as amended (22 U.S.C. sections 1451-53);

(e) Section 636 of Public Law 87-195, 75 Stat. 424, as amended (22 U.S.C. section 2396);

(f) Sections 5 and 6 of Public Law 87-293, 75 Stat. 612, as amended (22 U.S.C. sections 2504-05);

(g) Sections 103, 301, 312, 403, 409, 504, 608, 901, 903, 904, and 1101 of Public Law 96-465, 94 Stat. 2071 (22 U.S.C. sections 3903, 3941, 3952, 3963, 3969, 3984, 4008, 4081, 4083, 4084, and 4131);

(h) Section 15 of Public Law 90-202, 81 Stat. 602, as added by section 28(b)(2) of Public Law 93-259, 88 Stat. 55, and as amended (29 U.S.C. section 633a);

(i) Sections 235 and 4105 of title 38, United States Code;

(j) Section 203 of the Act of July 1, 1944, c.373, 53 Stat. 682, as amended (42 U.S.C. section 204);

(k) Section 104 of Public Law 93-113, 87 Stat. 394 (42 U.S.C. section 4954); and

(l) Civil Service Rules VII and VIII (5 C.F.R. parts 7 and 8).

Sec. 4. Statutes relating to protection and services in foreign countries. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of:

(a) Sections 351 and 1486 of title 10, United States Code;

(b) Section 498 of the Act of June 17, 1930, c.497, 46 Stat. 590, as amended (19 U.S.C. section 1498);

(c) Subsection (b) of section 502 of Public Law 93-618, 88 Stat. 1978 (19 U.S.C. section 2462(b));

(d) Section 2001 of the Revised Statutes of 1878 (22 U.S.C. section 1732);

(e) Section 108 of Public Law 95-105, 91 Stat. 845 (22 U.S.C. section 2151n-1);

(f) Sections 601 and 620 of Public Law 87-195, 75 Stat. 424, as amended (22 U.S.C. sections 2351 and 2370);

(g) Section 3 of the Act of August 1, 1956, c.841, 70 Stat. 890 (22 U.S.C. section 2670);

(h) Section 7 of Public Law 96-8, 93 Stat. 14 (22 U.S.C. section 3306);

(i) Sections 1707, 1709, 1711, 1734, and 1737 of the Revised Statutes of 1878, as amended (22 U.S.C. sections 4193, 4195, 4197, 4217, and 4218);

(j) Section 1 of the Act of December 23, 1944, c.716, 58 Stat. 921, as amended (31 U.S.C. section 492a);

(k) Sections 3048 and 3689 of the Revised Statutes of 1878, as amended (31 U.S.C. section 711);

(l) Sections 4294 and 4295 of the Revised Statutes of 2878 (33 U.S.C. sections 382 and 383);

(m) Section 1113 of the Act of August 14, 1935, c.531, 49 Stat. 620, as added by section 302 of Public Law 87-64, 75 Stat. 131, and as amended (42 U.S.C. section 1313);

(n) Section 521 of Public Law 94-163, 89 Stat. 871 (42 U.S.C. section 6391); and

(o) Sections 2, 8, 10, and 12 of the Act of October 6, 1917, c.106, 40 Stat. 411, as amended (50 U.S.C. App. sections 2, 8, 10, and 12).

Sec. 5. Statutes relating to commerce. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of:

(a) Sections 302, 310D, 311, and 321 of Public Law 87-128, 75 Stat. 294, as amended (7 U.S.C. sections 1922, 1934, 1941, and 1961);

(b) Section 5146 of the Revised Statutes of 1878, as amended (12 U.S.C. section 72);

(c) Subsection (a) of section 25 of the Act of December 23, 1913, c.6, 38 Stat. 251, as added by the Act of December 24, 1919, c.18, 41 Stat. 378, and as amended (12 U.S.C. section 619);

(d) Subsection (a) of section 7 of the Act of July 22, 1932, c.522, 47 Stat. 725, as amended (12 U.S.C. section 1427(a));

(e) Subsection (b) of section 5.1 of Public Law 92-181, 85 Stat. 583 (12 U.S.C. section 2222);

(f) Subsection (i) of section 44 of the Act of July 5, 1946, c.540, 60 Stat. 427, as amended (15 U.S.C. section 1126(i));

(g) Subsection (b)(7) of section 4 of the Act of August 8, 1956, c.1036, 70 Stat. 1119, as amended (16 U.S.C. section 742c(b)(7));

(h) Subsection (e) of section 4 of the Act of June 10, 1920, c.285, 41 Stat. 1063, as amended (16 U.S.C. section 797(e));

(i) Subsection (b) of section 101 of Public Law 94-553, 90 Stat. 2541 (17 U.S.C. section 104 (b));

(j) Subsection (a) of section 526 of the Act of June 17, 1930, c.497, 46 Stat. 590, as amended (19 U.S.C. section 1526(a));

(k) Subsection (a)(5) of section 2 of the Act of June 20, 1936, c.638, 49 Stat. 1559, as amended (20 U.S.C. section 107a(a)(5));

(l) Section 238 of Public Law 87-195, 75 Stat. 424, as added by section 105 of Public Law 91-175, 83 Stat. 805, and as amended (22 U.S.C. section 2198);

(m) Section 897 of the Internal Revenue Code of 1954, as added by subsection (a) of section 1122 of Public Law 96-499, 94 Stat. 2599 (26 U.S.C. section 897);

(n) Subsection (b)(7) of section 622 of Public Law 96-294, 94 Stat. 611 (30 U.S.C. section 1522(b)(7));

(o) Subsection (5) of section 3 of Public Law 93-627, 88 Stat. 2126 (33 U.S.C. section 1502(5));

(p) Subsection (f)(3) of section 514 of the Act of July 15, 1949, c.338, 63 Stat. 413, as added by subsection (a) of section 804 of Public Law 87-70, 75 Stat. 149, and as amended (42 U.S.C. section 1484(f)(3));

(q) Subsection (d) of section 103 and subsection (d) of section 104 of the Act of August 1, 1946, c.724, 60 Stat. 754, as added by section 1 of the Act of August 30, 1954, c.1073, 68 Stat. 921, and as amended (42 U.S.C. sections 2133(d) and 2134(d)).

(r) Subsection (b)(2)(A) of section 7 of Public Law 93-577, 88 Stat. 1878 (42 U.S.C. section 5906(b)(2)(A));

(s) Subsection (p)(1) of section 19 of Public Law 93-577, 88 Stat. 1878, as added by subsection (b) of section 207 of Public Law 95-238, 92 Stat. 53 (42 U.S.C. section 5919(p)(1));

(t) Subsection (b) of section 179 of Public Law 96-294, 94 Stat. 611 (42 U.S.C. section 8779(b)(4));

(u) Subsection (a)(3) of section 2, subsection (a) of section 101, and subsection (e)(2)(C) of section 108 of Public Law 96-320, 94 Stat. 974 (42 U.S.C. sections 9101(a)(3); 9111(a); and 9118(e)(2)(C));

(v) Section 4219 of the Revised Statutes of 1878, as amended (46 U.S.C. section 121);

(w) Section 4131 of the Revised Statutes of 1878, as amended (46 U.S.C. section 221);

(x) Section 1 of the Act of August 1, 1939, c.409, 53 Stat. 1145, as amended (46 U.S.C. section 242);

(y) Section 4377 of the Revised Statutes of 1878, as amended (46 U.S.C. section 325);

(z) Section 5 of the Act of June 25, 1936, c.816, 49 Stat. 1930 (46 U.S.C. section 672a);

(aa) Section 36 of the Act of September 7, 1916, c.451, 39 Stat. 728 (46 U.S.C. section 834);

(bb) Sections 302, 501, 509, 601, 809(a), 1103, and 1104 of the Act of June 29, 1936, c.858, 49 Stat. 1985, as amended (46 U.S.C. sections 1132, 1151, 1159, 1171, 1213, 1273 and 1274);

(cc) Subsection (a) of section 203 of Public Law 96-320, 94 Stat. 974 (46 U.S.C. section 1279c(a));

(dd) Sections 1201 and 1203 of the Act of June 29, 1936, c.858, 49 Stat. 1985, as added by the Act of September 7, 1950, c.906, 64 Stat. 773, and as amended (46 U.S.C. sections 1281 and 1283);

(ee) Sections 1301, 1303, 1304, and 1306 of Public Law 96-453, 94 Stat. 1997 (46 U.S.C. sections 1295, 1295b, 1295c, and 1295e);

(ff) Subsection (l)(1) of section 303 and subsection (b) of section 310 of the Act of June 19, 1934, c.652, 48 Stat. 1064, as amended (47 U.S.C. sections 303(l)(1) and 310(b));

(gg) Subsection (16) of section 101, section 104, and subsection (d)(4) of section 401 of Public Law 85-726, 72 Stat. 731, as amended (49 U.S.C. sections 1301(16), 1304, and 1371(d)(4));

(hh) Section 418 of Public Law 85-726, 72 Stat. 731, as added by subsection (a) of section 17 of Public Law 95-163, 91 Stat. 1278, and as amended (49 U.S.C. section 1388); and

(ii) Sections 501, 602, and 1303 of Public Law 85-726, 72 Stat. 731, as amended (49 U.S.C. sections 1401, 1422, and 1533).

Sec. 6. Statutes relating to political and civil rights. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of:

(a) Section 319 of Public Law 92-225, 86 Stat. 3, as added by subsection (2) of section 112 of Public Law 94-283, 90 Stat. 475, and as redesignated by subsection (5) of section 105 of Public Law 96-187, 93 Stat. 1339 (2 U.S.C. section 441e);

(b) Subsection (a)(2) of section 3 of Public Law 93-579, 88 Stat. 1896, as amended (5 U.S.C. section 552a(a)(2));

(c) Sections 241 and 243, subsection (b)(5) of section 245, subsection (a) of section 4000, and subsection (b) of section 4100 of title 18, United States Code;

(d) Sections 4081 and 4082 of the Revised Statutes of 1878, as amended (22 U.S.C. sections 257 and 258);

(e) Subsection (b)(2) of section 1 of Act of June 8, 1938, c.327, 52 Stat. 631, as amended (22 U.S.C. section 611);

(f) Sections 1343, 1344, 1391, 1443, 1861, 1862, 1863, and 1865 of title 28, United States Code;

(g) Section 505 of the Act of June 30, 1948, c.758, 62 Stat. 1115, as added by section 2 of Public Law 92-500, 86 Stat. 816 (33 U.S.C. section 1365);

(h) Subsection (a)(1) of section 2004 of the revised Statutes of 1878, as amended (42 U.S.C. section 1971(a)(1));

(i) Section 2, subsection (b) of section 3, section 4, and subsection (a) of section 10 of Public Law 89-110, 79 Stat. 437 (42 U.S.C. sections 1973, 1973a(b), 1973b, and 1973h(a));

(j) Subsection (a) of section 201 of Public Law 89-110, 79 Stat. 437, as added by section 6 of Public Law 91-285, 84 Stat. 314, and as amended (42 U.S.C. section 1973aa(a));

(k) Section 203 of Public Law 89-110, 79 Stat. 437, as added by section 301 of Public Law 94-73, 89 Stat. 400 (42 U.S.C. section 1973aa-1a);

(l) Section 104 of Public Law 85-315, 71 Stat. 634, as amended (42 U.S.C. section 1975c);

(m) Section 1979 of the Revised Statutes of 1878, as amended (42 U.S.C. section 1983);

(n) Section 1980 of the Revised Statutes of 1878 (42 U.S.C. section 1985);

(o) Section 702 of Public Law 88-352, 78 Stat. 241, as amended (42 U.S.C. section 2000e-1);

(p) Section 717 of Public Law 88-352, 78 Stat. 241, as added by section 11 of Public Law 92-261, 86 Stat. 103 (42 U.S.C. section 2000e-16);

(q) Section 2 of the Act of March 2, 1917, c.145, 39 Stat. 951, as amended (48 U.S.C. section 737);

(r) Subsection (i) of section 101 of Public Law 95-511, 92 Stat. 1783 (50 U.S.C. section 1801);

(s) Subsection (b)(3) of section 10 of the Act of June 24, 1948, c.625, 62 Stat. 604, as amended (50 U.S.C. App. section 460(b)(3));

(t) Section 105 of the Act of October 17, 1940, c.888, 54 Stat. 1178, as added by section 4 of the Act of October 6, 1942, c.581, 56 Stat. 769 (50 U.S.C. App. section 514); and

(u) Section 512 of the Act of October 17, 1940, c.888, 54 Stat. 1178, as amended (50 U.S.C. App. section 572).

Sec. 7. Statutes relating to federal programs and benefits. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of:

(a) Subsection (f) of section 6 of Public Law 88-525, 78 Stat. 703, as amended (7 U.S.C. section 2015(f));

(b) Subsection (a) of section 2545 of title 10, United States Code;

(c) Subsection (m)(2) of section 2[3] of the Act of September 21, 1950, c.967, 64 Stat. 873, as added by section 6(c)(4) of Public Law 95-369, 92 Stat. 607 (12 U.S.C. section 1813(m)(2));

(d) Subsection (b) of section 500 of title 14, United States Code;

(e) Paragraphs (4) and (5) of subsection (a) of section 4 of Public Law 88-578, 78 Stat. 897, as added by section 2 of Public Law 92-347, 86 Stat. 459, as amended, and by subsection (2) of section 9 of Public Law 96-344, 94 Stat. 1133 (16 U.S.C. section 460l-6a (a)(4) and (5));

(f) Section 29 of the Act of August 1, 1956, c.841, 70 Stat. 890, as added by section 2201 of Public Law 96-465, 94 Stat. 2071 (22 U.S.C. section 2701);

(g) Section 2 of Public Law 95-524, 92 Stat. 1909 (29 U.S.C. sections 834(e) and 993(b)(1)(C));

(h) Subsection (g) of section 9 of the Act of March 4, 1927, c.509, 44 Stat. 1424, as amended (33 U.S.C. section 909(g));

(i) Subsection (b) of section 624 of title 38, United States Code;

(j) Subsection (d)(12) of section 789, formerly section 776, of the Act of July 1, 1944, c.373, 58 Stat. 682, as added by subsection (a) of section 3 of Public Law

93-154, 87 Stat. 594, as amended (42 U.S.C. section 295g-8(d)(12));

(k) Subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935, c.531, 49 Stat. 620, as amended (42 U.S.C. sections 302(b)(3) and 304);

(l) Subsection (t) of section 202 of the Act of August 14, 1935, c.531, 49 Stat. 620, as added by subsection (a) of section 118 of the Act of August 1, 1956, c.836, 70 Stat. 807, and as amended (42 U.S.C. section 402(t));

(m) Subsection (a)(4) of section 103 of Public Law 89-97, 79 Stat. 285, as amended (42 U.S.C. section 426a(a)(4));

(n) Subsection (a)(3) of section 228 of the Act of August 14, 1935, c.531, 49 Stat. 620, as added by subsection (a) of section 302 of Public Law 89-368, 80 Stat. 38, as amended (42 U.S.C. section 428(a)(3));

(o) Subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935, c.531, 49 Stat. 620, as amended (42 U.S.C. sections 1202(b)(2) and 1204);

(p) Subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935, C. 531, 49 Stat. 620, as added by section 351 of the Act of August 29, 1950, c.809, 64 Stat. 477 (42 U.S.C. sections 1352(b)(2) and 1354);

(q) Subsection (a)(1)(B) of section 1614 and subsection (a)(3) of section 1818 of the Act of August 14, 1935, c.531, 49 Stat. 620, as added by sections 301 and 202, respectively, of Public Law 92-603, 86 Stat. 1329, and as amended (42 U.S.C. sections 1382c(a)(1)(B) and 1395i-2(a)(3));

(r) Subsection (2) of section 1836 and subsection (b)(4) of section 1902 of the

Act of August 14, 1935, c.531, 49 Stat. 620, as added by subsection (a) of section 102 and subsection (b) of section 121, respectively, of Public Law 89-97, 79 Stat. 285 (42 U.S.C. sections 1395o(2) and 1396a(b)(4));

(s) Subsection (b) of section 2 of the Act of August 16, 1941, c.357, 55 Stat. 62? (42 U.S.C. section 1652(b)).

(t) Subsection (c) of section 101 of the Act of December 2, 1942, c.668, 56 Stat. 1028, as amended (42 U.S.C. section 1701(c));

(u) Section 10 of the Act of May 10, 1950, c.171, 64 Stat. 149, as amended (42 U.S.C. section 1869);

(v) Subsection (c) of section 2 of Public Law 86-209, 73 Stat. 431 (42 U.S.C. section 1881(c)); and

(w) Section 2 of the Act of August 3, 1950, c.520, 64 Stat. 397 (42 U.S.C. section 1922).

Sec. 8. Geographic applicability of laws unaffected. Nothing in this Act shall extend to the Northern Mariana Islands any law not otherwise geographically applicable to or within the Northern Mariana Islands.

Sec. 9. Statutory Construction. Citizens of the Northern Mariana Islands shall be deemed citizens of the United States for purposes of any provision requiring United States citizenship as a prerequisite to receipt of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241).

Sec. 10. Definition. For purposes of this Act, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United

States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

Sec. 11. Expiration. This Act and the rights and privileges extended hereunder shall expire upon establishment of the Commonwealth of the Northern Mariana Islands.

The Federal Tort Claims Act

The following language, if enacted by Congress, would implement the Commission's recommendation that the present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands be clarified and affirmed:

An Act to clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall not be considered "a foreign country" for purposes of sub-section (k) of section 2680 of Title 28, United States Code.

Sec. 2. This Act shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

The Clean Air Act

The following language, if enacted by the Congress of the United States, would implement the Commission's recommendation that the Northern Mariana Islands be excluded from provisions of the Clean Air

Act governing motor vehicle emission and fuel standards and that the Administrator of the Environmental Protection Agency be required to waive application to the Northern Mariana Islands of any other requirement of the Clean Air Act on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance.

An Act to amend the application of the Clean Air Act to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Clean Air Act (42 U.S.C. section 7601) is amended by adding a new subsection to read as follows:

> "(d) The Administrator shall exempt the Northern Mariana Islands from any requirement imposed by this Act (or by regulations issued hereunder) on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement are to be significantly outweighed by the costs of compliance."

Sec. 2. Subsection (d) of section 302 of the Clean Air Act (42 U.S.C. section 7602(d)) is amended by adding " , except for purposes of part A of title II of this Act," before "the Commonwealth of the Northern Mariana Islands. " .

* * *

STATEMENT OF DANIEL H. MacMEEKIN, EXECUTIVE DIRECTOR, NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Mr. MacMeekin. Thank you, Mr. Chairman. We have handed up a written statement which I would hope could be included in the record.

Senator Weicker. All the written statement will be included in the record in its entirety.

Mr. MacMeekin. Thank you. It was 1975 when the Covenant was agreed upon between the representatives of the executive branch and the representatives of the Northern Mariana Islands and approved by the people out there in the plebiscite.

Presumably at that time drafts of the Covenant had been circulated to the Federal agencies and the agencies were well aware that citizenship for the people of the Northern Marianas would be forthcoming as a result of approval of the Covenant.

The negotiating history of the Covenant shows that at that time it was anticipated that the trusteeship would end in 1981. That, of course, has not been the case. The delay has caused concern about citizenship in the Northern Mariana Islands and that eventually led to the Commission's drafting of what is now title I of S. 1366.

The Commission as part of its drafting process circulated drafts of the bill to the Federal agencies. This took place in 1981, and so at least as of that time it was known what was being considered by the Commission. The proposal again came up in the form of S. 2088 last year, so we think there has been ample time to look over the various provisions.

Incidentally, I heard earlier today the assertion that title I of S. 1366 lists 300 statutes. That took me somewhat aback, so I counted them while I was listening to the other testimony. I came up with 206, and I think that's about right.

There is also talk about the need for each of these agencies to determine the practical effects of deeming citizens of the Northern Mariana Islands citizens of the United States for purposes of statutes within their jurisdiction, what that practical effect will be. It is pure and simple, it seems to me. The practical effect is that Northern Mariana Islands citizens will be treated as U.S. citizens for purposes of the requirements of each statute listed. I do not see the complications.

I have not seen the alternative bill that has been offered by the administration, although I have had some sense of what it would contain, I am particularly not aware of the revised citizenship definition given there for "citizens of the Northern Mariana Islands." The *Pangelinan* v. *Castro* case that was referred to allowed a number of persons of Philippine ancestry to claim "Northern Mariana Islands citizenship". The covenant and the Constitution of the Northern Mariana Islands define Northern Mariana Island citizens in identical terms with one exception. The covenant defines them as of the day before the termination of the trusteeship. When they were drafting the constitution they couldn't use that date because it was still in the future. The class of Northern Mariana Islands citizens would be undefined until that date arrived, so they used instead the effective date of the constitution.

The net effect is that everybody who qualifies under the constitution will qualify under the covenant, but not everybody who qualifies under the covenant will have been qualified under the constitution because some will not have been born yet. Title I of S. 1366 does not give anybody a claim to U.S. citizenship on termination of the trusteeship if they are not entitled to it under the terms of the covenant.

The bill, as I said, was drafted in 1981. There have been some changes in the laws that are listed in the bill. In our written statement I enumerate those changes. In a couple of cases the citizenship requirements have been eliminated. In other cases, Presidential proclamations or other statutes have done exactly what this bill proposed to be done, and that is treat Northern Mariana Islands citizens as citizens of the United States for purposes of particular statutes. Finally, there have been a number of technical changes. Paragraphs have been renumbered and such.

In my written statement I also advert to title II of S. 1366. There is a provision in title II which gives the district court of the Northern Mariana Islands bankruptcy jurisdiction after 1984. The Commission has already brought the need for that provision and for another brief section assuring that the bankruptcy laws apply in the Northern Mariana Islands to the attention of the Senate and the House Judiciary Committees. To my written statement I have appended the Commission's communications to those committees.

Thank you.

[The prepared statement of Mr. MacMeekin follows:]

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

STATEMENT OF
DANIEL H. MACMEEKIN
EXECUTIVE DIRECTOR
NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS
BEFORE THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ON S.1366
OCTOBER 6, 1983

Thank you for the opportunity to testify on S.1366.

Title I.

The people of the Northern Mariana Islands in 1975 approved by a wide margin the Covenant that links the Northern Mariana Islands permanently with the United States. A key provision of that Covenant is section 301, granting United States citizenship to citizens of the Northern Mariana Islands on termination of the United Nations trusteeship under which the Northern Mariana Islands is presently administered by the United States. The promise of United States citizenship was an important inducement to establishing the commonwealth arrangement. It is now 1983, eight years after that approval of the Covenant and seven years after its approval by Congress, but the people of the Northern Mariana Islands--through no fault of their own—are not yet citizens of the United States. Termination of the trusteeship awaits resolution of the future political status of other parts of the Trust Territory, and approval of those arrangements by Congress and by the United Nations. Although there has been progress in the last year toward settling the future status of the rest of the Trust Territory, we are aware of no announced target date for termination of the trusteeship at the present time. Until that date, citizens of the Northern Mariana Islands can be denied rights, privileges, and immunities that, by federal law, are conditioned on United States citizenship.

Were it possible and politic to grant full United States citizenship to citizens of the Northern Mariana Islands now, the Commission, I am sure, would unanimously support that course of action. Such a grant of United States citizenship prior to termination of the trusteeship, however, is seen by some as inconsistent with the present trusteeship status of the Northern Mariana Islands, under which the United States does not assert sovereignty over the Trust Territory.

Title I of S.1366, does not accelerate the grant of United States citizenship to citizens of the Northern Mariana Islands. Indeed, it does not grant United States citizenship at all. Congress can repeal this proposed legislation at any time. Congress could not, however, legislatively revoke an individual's United States citizenship.

Rather, title I of S.1366 is drafted on the premise that Congress, under Article 3 of the Trusteeship Agreement, has the indisputable power to apply to the Northern Mariana Islands "such of the laws of the United States as it may deem appropriate to local conditions and requirements." Accordingly, Congress may specify that, for purposes of a particular statute or statutes, citizens of the Northern Mariana Islands are to be treated as though they are citizens of the United States. Legislation of this sort is not a grant of full and immediate United States citizenship by Congress. It is not a declaration of United States sovereignty over the Northern Mariana Islands nor is it a "back-door annexation" of those islands prior to termination of the trusteeship. It is not an amendment of the Covenant's provisions on citizenship. It is, however, at least a partial remedy for the frustration felt by the people of the Northern Mariana Islands because of the long delay in ending the trusteeship.

Title I of S.1366 provides that citizens of the Northern Mariana Islands are to be treated as though they were citizens of the United States for purposes of a fairly long list of statutes. That list of statutes by no means includes all federal statutes discriminating on the basis of citizenship; many statutes were omitted because the likelihood of adverse effect on an individual citizen of the Northern Mariana Islands was thought to be very small.

The statutes included in the bill are those known to affect particular citizens of the Northern Mariana Islands or thought reasonably likely to affect citizens of the Northern Mariana Islands in the relatively near future. The population of the Northern Mariana Islands is small when compared with that of the United States. For this reason, relatively few persons will be affected by the inclusion or omission of any particular federal statute from the bill. But a larger number are likely to be affected by at least one of the various statutes listed. Those persons adversely affected are likely to feel aggrieved. Removal of these citizenship barriers removes the potential for grievances at virtually no cost to the United States.

Title I of S.1366 authorizes treatment of citizens of the Northern Mariana Islands as citizens of the United States for purposes of six categories of federal statutes, relating to (1) the uniformed services; (2) federal employment; (3) protection and services in foreign countries; (4) commerce; (5) political and civil rights; and (6) federal programs and benefits. Thumbnail descriptions of each of the statutes enumerated in title I are found at pages 7 to 41 of the Commission's interim report. Another section of title I ensures that citizens of the Northern Mariana Islands will be treated as citizens of the United States for purposes of United States citizenship requirements in any statute applicable to the Northern Mariana Islands by its own terms or by operation of the Covenant. At pages 42 to 47 of the interim report are examples of statutes applicable to the Northern Mariana Islands but conferring benefits only on United States citizens.

Congress has already enacted Public Law 96-351, to allow citizens of the Northern Mariana Islands to be treated as citizens of the United States eligible to enlist in the Armed Forces of the United States. Three separate presidential proclamations have suspended particular United States citizenship requirements in specific federal statutes (under the authority granted by Congress in section 1004(a) of the Covenant). Title I of S.1366 similarly would suspend United States citizenship requirements for citizens of the Northern Mariana Islands in a number of other statutes and, thereby, relieve the need for individual citizens of the Northern Mariana Islands to petition Congress or the President on a statute-by-statute basis when adversely affected by a United States citizenship requirement in one of these statutes.

As a consequence, enactment of title I of this bill would not only remove citizenship barriers for citizens of the Northern Mariana Islands; it would also conserve the time of Congress and the Executive Branch by addressing statutes comprehensively rather than piecemeal. Enactment of this title will increase opportunities and eliminate frustrations for individual citizens of the Northern Mariana Islands and provide a visible milepost to the people of the Northern Mariana Islands on their road to full United States citizenship.

Several of the federal laws listed in title I of S.1366 have changed since the bill was drafted by Commission staff. We suggest the following changes in S.1366 to reflect those changes:

> Page 2, lines 13-14. On line 13, delete "532,". On line 14, delete "2104," and "2122,".
>
> Section 1006 of Public Law 98-94, 97 Stat.— (September 24, 1983) enacted the substance of the Commission's recommendations with respect to sections 532, 2104, and 2122 of title 10, U.S.C.
>
> Page 3, lines 4-6. Delete paragraph (d) and redesignate the succeeding paragraphs accordingly.
>
> The citizenship requirements in sections 1451-1453 of title 22, U.S.C., were eliminated by section 304(a)(1) of Public Law 97-241, 96 Stat. 273, 292 (1982).
>
> Page 5, lines 1-2. Delete paragraphs (j) and (k). Insert a new paragraph (j) to read:
>
> > (j) sections 1305 and 3342 of title 31, United States Code.
>
> Redesignate the succeeding paragraphs accordingly.
>
> Former sections 492a and 711 of title 31, U.S.C., were redesignated as sections 1305 and 3342 of title 31 in the codification of that title by Public Law 97-258, 96 Stat. 877 (1982).

Page 9, lines 12-15. Delete paragraph (ff) and redesignate the succeeding paragraphs accordingly.

Presidential Proclamation 4938, 47 Fed. Reg. 19307 (1982), provides that citizens of the Northern Mariana Islands are to be treated as citizens of the United States for purposes of sections 303 (1)(1) and 310(b) of title 47, U.S.C.

Page 13, lines 18-19. Delete paragraph (g) and redesignate the succeeding paragraphs accordingly.

Sections 834(e) and 993(b)(1)(C) of title 29, U.S.C., were repealed by section 184(a)(1) of Public Law 97-300, 96 Stat. 1322, 1357 (1982).

Page 14, lines 1 and 5. On line 1, insert "(b)(12)" in place of "(d)(12)". On line 5, insert "295g-8(b)(12)" in place of "295g-8(d)(12)".

Former subsection (d) was redesignated subsection (b) by section 2744(c) of Public Law 97-35, 95 Stat. 357, 924 (1981).

Page 15, lines 11 and 15. On line 11, insert "(b)(3)" in place of "(b)(4)". On line 15, insert "1396a(b)(3)" in place of "1396a(b)(4)".

Former paragraph (4) was redesignated paragraph (3) by section 137(b)(10) of Public Law 97-248, 96 Stat. 324, 378 (1982).

Also somewhat changed is section 221 of title 46, U.S.C. (listed on page 8, lines 13-14 of S.1366). Previously, this section limited vessels enjoying the benefits and privileges of a vessel of the United States to those owned by United States citizens or corporations, and required that the master and all officers of such vessels be United States citizens. Section 126(a) of Public Law 96-594, 94 Stat. 3453, 3459 (1980), amended section 221 to require only that United States citizens serve as the master, chief engineer, or officer in charge of a deck watch or engineering watch on any vessel documented under the laws of the United States.

There thus has been a change in substance since the Commission's recommendation was drafted. Treating citizens of the Northern Mariana Islands as citizens of the United States for purposes of the amended section is, however, entirely within the spirit of the Commission's original recommendation. Consequently, no change in subsection (w) of S.1366's section 105 is proposed.

Finally, on page 5, line 6 is a typographical error: "2878" should read "1878".

Title II.

I have only one comment with regard to title II of the bill. In section 212, on page 34 of the bill as introduced, at lines 16 and 17, is language that, effective April 1, 1984, gives the District Court of the Northern Mariana Islands the jurisdiction of a bankruptcy court of the United States. The Commission in July 1982 sent letters to the Chairmen of the Senate and House Committees on the Judiciary, recommending that those committees, in the revision of the bankruptcy laws occasioned by the Supreme Court's Northern Pipeline decision, also make changes in the bankruptcy laws as they affect the Northern Mariana Islands. Specifically, the Commission recommended that legislation be enacted to ensure (1) that the bankruptcy laws of the United States now apply in the Northern Mariana Islands and will continue to apply after termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984. The language in section 212 of S.1366 satisfies the objective of the latter recommendation, ensuring continued bankruptcy court jurisdiction in the Northern Mariana Islands after April 1, 1984. An additional section in title II, reading simply "The Northern Mariana Islands shall be considered a part of the United States for purposes of the bankruptcy laws of the United States." would accomplish the objective of the former.

Attached to this statement is a copy of the letter from Commission Chair James A. Joseph to Senator Thurmond on the bankruptcy laws, with its various enclosures.

Thank you.

* * *

Attachment to statement of Daniel H. MacMeekin, page 1.

Northern Mariana Islands Commission on Federal Laws **Washington, D.C. 20240** **(202) 343-5817**

James A. Joseph
Chair and
Commissioner

Pedro A. Tenorio
Vice-Chair and
Commissioner

Jesus C. Borja
Commissioner

Hon. Phillip Burton
Commissioner

Agnes M. McPhetres
Commissioner

Edward DLG. Pangelinan
Commissioner

Myron B. Thompson
Commissioner

Daniel H. MacMeekin
Executive Director

JUL 29 1982

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Re: Applicability of the federal bankruptcy laws to the Northern Mariana Islands

Dear Senator Thurmond:

The Northern Mariana Islands Commission on Federal Laws was created, pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 48 U.S.C. section 1681 note) "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The staff of the Commission has prepared for the Commission's approval a recommendation that the Commission in turn recommend to the United States Congress the enactment of legislation to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984. The present applicability of the federal bankruptcy laws to the Northern Mariana Islands was left in some doubt with the substantial revision of those laws by Public Law 95-598, 92 Stat. 2549, enacted on November 6, 1978. On June 28, 1982, the Supreme Court announced its decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., --U.S.--, 50 U.S.L.W. 4892 (No. 81-150), holding portions of Public Law 95-598 unconstitutional. At its meeting on July 7, 1982, the Commission decided that the recommendation of its staff should be sent to you with the Commission's endorsement. I now enclose that recommendation in the hope that Congress, in responding to the Northern Pipeline decision, will also ensure the continued applicability of the

Attachment to statement of Daniel H. MacMeekin, page 2.

- 2 -

federal bankruptcy laws in the Northern Mariana Islands and the continued existence of bankruptcy court jurisdiction in the Northern Mariana Islands.

Sincerely,

James A. Joseph

Enclosure

xc: Members of the Commission

Attachment to statement of Daniel H. MacMeekin. page 3.

Northern Mariana Islands Commission on Federal Laws   Washington, D.C. 20240   (202) 343-5817

STAFF RECOMMENDATION

ON THE

FEDERAL BANKRUPTCY LAWS

Attachment to statement of Daniel H. MacMeekin, page 4.

Recommendation. Legislation should be enacted to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984.

The statute. Article I, Section 8, Clause 4 of the United States Constitution gives Congress the power to establish uniform bankruptcy laws throughout the United States. Laws enacted pursuant to this power are "for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts." Black's Law Dictionary 134 (5th ed. 1979). Bankruptcy laws cover both voluntary and involuntary bankruptcy, and provide generally for annulment of the bankrupt's debts in exchange for distribution of most of the bankrupt's property to his or her creditors. The bankrupt gains relief from the burden of debt that, no matter how hard he or she labors, cannot be liquidated. The creditors are each assured a fair share of whatever assets the bankrupt can use to pay the debts. Society in general benefits because the bankrupt's incentive to participate in productive activity is restored and because disputes among creditors seeking first satisfaction from the bankrupts' inadequate assets are minimized.

Title 11 of the United States Code contains the bankruptcy laws of the United States. Title 11 was substantially revised by Public Law 95-598, 92 Stat. 2549, enacted on November 6, 1978.

Present applicability. For the bankruptcy laws to be effectively applicable in the Northern Mariana Islands, two conditions must be satisfied: First, a person residing in the Northern Mariana Islands must be able under the laws to qualify as a debtor eligible for discharge of his or her debts in bankruptcy. Second, a court in the Northern Mariana Islands must be able to administer and enforce the bankruptcy laws.

Whether a person residing in the Northern Mariana Islands is able to qualify as a debtor eligible for discharge in bankruptcy is uncertain. (This question is discussed in greater detail in Appendix A to this recommendation.)

The District Court for the Northern Mariana Islands has the power to administer and enforce the bankruptcy laws. That power will expire on April 1, 1984, when administration and enforcement will be transferred from federal district courts to new bankruptcy courts. Through apparent oversight, Congress did not establish a bankruptcy court for the Northern Mariana Islands to assume jurisdiction over bankruptcy matters on April 1, 1984. The lack of provision for a

Attachment to statement of Daniel H. MacMeekin, page 5.

bankruptcy court in the Northern Mariana Islands after April 1, 1984, is discussed in greater detail in Appendix B to this recommendation.

Discussion. The federal bankruptcy laws should be applicable in the Northern Mariana Islands.

The purposes of the federal bankruptcy laws could be served instead by enactment of a local bankruptcy statute in the Northern Mariana Islands. While the United States Constitution requires a uniform federal law of bankruptcy, Congress almost certainly has the power under the territorial clause, Article IV, Section 3, Clause 2 of the Constitution, to permit deviation from the rule of uniformity for the Northern Mariana Islands. But the policy considerations that supported adoption of the constitutional rule of uniformity support application in the Northern Mariana Islands of the same bankruptcy law that is applicable elsewhere in the United States. "The purpose behind the [constitutional] grant of the bankruptcy [power] . . . was to enable the new central government to eradicate the opportunities for fraud and forum-shopping engendered by varying state insolvency . . . laws . . . ." In re Penn Central Transportation Co., 384 F.Supp. 895, 915 (Spec. Ct., RRRA 1974). See generally 3 J. Story, Commentaries on the Constitution of the United States, sections 1102-04 (1833); Perez v. Campbell, 402 U.S. 637, 656 (1971).

Over the years substantial thought and effort has brought the federal bankruptcy laws into their present form. Development of a local bankruptcy law for the Northern Mariana Islands would require a large allocation of the limited resources of the island, another reason for instead applying the federal law in the Northern Mariana Islands.

Proposed legislative language. The following language, if enacted by the U.S. Congress, would implement the staff's recommendation to ensure (1) that the bankruptcy laws of the United States presently apply in the Northern Mariana Islands and will continue to apply pending termination of the trusteeship; and (2) that bankruptcy court jurisdiction will continue to exist in the Northern Mariana Islands after April 1, 1984:

> An Act to clarify the applicability of the
> bankruptcy laws of the United States
> to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be considered a part of the United States for purposes of the bankruptcy laws of the United States.

Attachment to statement of Daniel H. MacMeekin, page 6.

Sec. 2. Section 2(a) of Public Law 95-157 (48 U.S.C. section 1694a(a)) is amended by inserting "and a bankruptcy court" immediately after "jurisdiction of a district court".

This language might also be incorporated into a larger bill embracing other subjects as well.

Attachment to statement of Daniel H. MacMeekin, page 7.

DRAFT

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

APPENDIX A

to

Staff Recommendation on the Bankruptcy Laws:

ABILITY OF PERSONS

IN THE NORTHERN MARIANA ISLANDS

TO QUALIFY AS DEBTORS

UNDER THE FEDERAL BANKRUPTCY LAWS

Attachment to statement of Daniel H. MacMeekin, page 8.

DRAFT

There is some doubt whether a person residing in the Northern Mariana Islands is able to qualify as a debtor eligible for discharge in bankruptcy under the federal bankruptcy laws, Title 11 of the United States Code. Section 109 of Title 11 provides:

> Notwithstanding any other provision of this section, only a person that resides in the United States, or has a domicile, a place of business, or property in the United States, or a municipality, may be debtor under this title.

11 U.S.C.A. section 109 (1979).

If the Northern Mariana Islands are part of the United States, section 109 presents no problem: A person residing in the Northern Mariana Islands would be a resident of the United States eligible to be a debtor under Title 11.

Title 11 does not contain a definition of "United States." (See 11 U.S.C.A. section 101 (1979) ("Definitions").)* The new bankruptcy law includes several references making apparent the congressional intent that the law should apply in Guam and the Virgin Islands. Section 335 of Public Law 95-598 amends the Organic Act of Guam to give the District Court of Guam the powers of a bankruptcy court and to make the federal bankruptcy rules applicable there. Section 336 amends the Revised Organic Act of the Virgin Islands in a similar manner. Similar provisions under the prior bankruptcy laws were considered sufficient to confirm the applicability of those laws in the Virgin Islands by the court in Christensen v. Donovan, 168 F. Supp. 892 (D.V.I. 1958).

Under the logic of the Christensen ruling, the prior bankruptcy laws would have been applicable to Guam. The prior bankruptcy laws

---

*Definitions contained in the now-repealed Title 11 are not helpful:

> "Courts of bankruptcy" shall include the United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable.
>
> "States" shall include the Territories and possessions which this title is or may hereafter be applicable, Alaska, and the District of Columbia.

11 U.S.C.A. section 1(10), (29) (repealed; reprinted 11 U.S.C.A. App. (1979)). Other provisions of repealed Title 11 gave no clear indication as to which Territories and possessions the title might be applicable. In Perez v. Campbell, 402 U.S. 637, 656 (1971), the Supreme Court read section 1(29), above, as making the bankruptcy laws applicable to the "Territories". This conclusion seems to go beyond the language of section 1(29).

Attachment to statement of Daniel H. MacMeekin, page 9.

DRAFT

thus would have been applicable to Guam and the several States. Under Section 502(a)(2) of the Covenant, laws in existence on January 9, 1978, and subsequent amendments to such laws will apply in the Northern Mariana Islands if they are applicable to Guam and "of general application to the several states." The now-repealed bankruptcy laws were in existence on January 9, 1978. So, if the prior bankruptcy laws applied on Guam, which they almost certainly did, they also applied in the Northern Mariana Islands.

The new Title 11 is not, however, an amendment of the old Title 11. Section 401(a) of the new bankruptcy law, Public Law 95-598, repealed the bankruptcy laws in effect on January 9, 1978. "'Repeal' of a law means its complete abrogation by the enactment of a subsequent statute, whereas the 'amendment' of a statute means an alteration in the law already existing, leaving some part of the original still standing." Black's Law Dictionary 1167 (5th ed. 1979) ("repeal"). (Some court decisions, however, have held that when a new statute repeals and replaces a similar or almost identical previous statute, the new statute may be treated as an amendment of the old. See, for example, Bear Lake Irrigation Co. v. Garland, 164 U.S. 1, 11-13 (1896); In re Martin's Estate, 153 Cal. 225, 94 P. 1053, 1055 (1908) and State ex rel. O'Connell v. Meyers, 51 Wash. 2d 454, 319 P. 2d 828, 832 (1957) (amendment includes a complete change in the law, so long as it is within the realm of the subject matter contained in the act).)

The new bankruptcy law cannot be considered, independently of the prior law, as applicable to the Northern Mariana Islands under the formula of section 502 (a)(2) of the Covenant, making applicable to the Northern Mariana Islands federal laws in existence on January 9, 1978, and their subsequent amendments which apply to Guam and the several states. The new bankruptcy law had not yet been enacted on January 9, 1978.

Independently of the Covenant, the new bankruptcy law could be held applicable to the Northern Mariana Islands if an intent on the part of Congress to make it applicable to the Northern Mariana Islands could be shown. The Northern Mariana Islands do not appear to have been mentioned at all in the legislative history of Public Law 95-598, as reprinted in 1978 U.S. Code Cong. Adm. News 5787 et seq.

Support for the applicability of the new bankruptcy law in the Northern Mariana Islands may be derived from section 1(c) of Public Law 95-157, 91 Stat. 1265, codified at 48 U.S.C.A. section 1694(c). This provision, enacted on November 8, 1977--just one year prior to enactment of the new bankruptcy law--, provides that "rules heretofore or hereafter promulgated and made effective by the Congress or the

Attachment to statement of Daniel H. MacMeekin, page 10.

DRAFT

Supreme Court of the United States pursuant to (Title) 11 . . . shall apply to the District Court for the Northern Mariana Islands . . . where appropriate, except as otherwise provided in articles IV and V of the covenant . . . ." (Emphasis supplied.) That the bankruptcy rules are to apply in the District Court for the Northern Mariana Islands is evidence that Congress intended the bankruptcy laws to be generally applicable in the Northern Mariana Islands.

According to information provided the Commission in March, 1981 by the Clerk of the District Court for the Northern Mariana Islands, bankruptcy petitions in the Northern Mariana Islands are handled by the United States Bankruptcy Court for the District of Hawaii. That court instructs prospective Northern Mariana Islands petitioners to send their petitions directly to the Bankruptcy Court in Hawaii.

As of March, 1981, only one petition for bankruptcy originating in the Northern Mariana Islands appears to have been filed. Its disposition is unknown.

Attachment to statement of Daniel H. MacMeekin, page 11.

DRAFT

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5817

APPENDIX B

to

Staff Recommendation on the Bankruptcy Laws

BANKRUPTCY JURISDICTION
IN THE NORTHERN MARIANA ISLANDS
AFTER APRIL 1, 1984

Attachment to statement of Daniel H. MacMeekin, page 12.

DRAFT

For the bankruptcy laws to be effectively applicable in the Northern Mariana Islands, a court in the Northern Mariana Islands must be able to administer and enforce those laws. Under existing law, there likely will be no court able to do so after April 1, 1984.

Section 2 of Public Law 95-157, 48 U.S.C.A. section 1694a (Supp. 1980), creating the District Court for the Northern Mariana Islands, provides in pertinent part, that "the District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States." Section 402(a) of the Covenant is to similar effect. Section 1334 of Title 28, U.S.C.A. (1976), provides that:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, in all matters and proceedings in bankruptcy.

Further, section 1(c) of Public Law 95-157, 48 U.S.C.A. section 1694a (Supp. 1980), makes the Bankruptcy Rules applicable to the District Court for the Northern Mariana Islands "where appropriate, except as otherwise provided in articles IV and V of the covenant. . . ." (The legislative history of Public Law 95-157, as reprinted in 1977 U.S. Code Cong. & Adm. News 3307 et seq. makes no reference to bankruptcy jurisdiction.)

After April 1, 1984, section 151(a) of Title 28 will read: "There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district." Public Law 95-598, sections 201(a), 402(b) (1978). Thus, as of April 1, 1984, a district court of the United States will not have bankruptcy jurisdiction and the fact that the District Court of the Northern Mariana Islands has the jurisdiction of a district court of the United States will no longer serve, in and of itself, to give it bankruptcy jurisdiction. Nor does the future section 151(a), quoted above, in and of itself create a United States Bankruptcy Court for the Northern Mariana Islands, since the Northern Mariana Islands does not constitute a "judicial district." (The judicial districts enumerated in Chapter 5 of Title 28 include only districts with Article III courts and the District of Puerto Rico; they do not include Guam, the Virgin Islands, or the Northern Mariana Islands.) Public Law 95-598 specifically amends the Organic Act of Guam and the Organic Act of the Virgin Islands to give the District Court of Guam and the District Court of the Virgin Islands, respectively, the "jurisdiction of a district court and of a bankruptcy court of the United States." Section 335(a), 336(a). No similar amendment was made for the Northern Mariana Islands, although this was almost certainly an oversight. (The new bankruptcy law was enacted on November 6, 1978, just short of a year after the November 8, 1977, legislation creating the District Court for the Northern Mariana Islands.)

Attachment to statement of Daniel H. MacMeekin, page 13.

DRAFT

An argument in favor of the bankruptcy jurisdiction of the District Court for the Northern Mariana Islands after April 1, 1984, may be fashioned from section 403(b) of the Covenant, or the near-identical provision in section 4(b) of Public Law 95-157:

> Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court of the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

Public Law 95-598, the new bankruptcy law, creates a new Chapter 6, "Bankruptcy Courts," in Title 28, Title II, 92 Stat. 2657. (That Chapter becomes effective on April 1, 1984. *Id.*, Title IV, section 402(b), 92 Stat. 2682.) The Chapter will apply to the District Court of Guam by virtue of Section 335(a) of the new bankruptcy law, noted above. And, by operation of section 403(b) of the Covenant (or section 4(b) of Public Law 95-157), Chapter 6 might also be said to "apply" to the District Court for the Northern Mariana Islands. This argument is weakened by the explicit provisions of Public Law 95-598, enacted after creation of the District Court for the Northern Mariana Islands, for establishment of post-April 1, 1984 bankruptcy-court jurisdiction in Guam and the Virgin Islands. Why, the counter-argument goes, should Congress not similarly have provided specifically for the Northern Mariana Islands, rather than relying upon the formula of section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) to accomplish its ends indirectly? Further, that section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) makes applicable to the Northern Mariana Islands or the District for the Northern Mariana Islands those portions of Title 28 which may in the future, after approval of the Covenant, be applicable to Guam or the District Court of Guam is not altogether certain. Section 403(b) of the Covenant (or section 4(b) of Public Law 95-157) just as easily can be read as referring only to those portions of Title 28 applicable to Guam or the District Court of Guam as of the date of approval of the Covenant (or the date of enactment of Public Law 95-157).

Senator WEICKER. Thank you very much. Mr. Guerrero.

STATEMENT OF HERMAN GUERRERO, EXECUTIVE ASSISTANT TO THE WASHINGTON REPRESENTATIVE, NORTHERN MARIANAS WASHINGTON OFFICE

Mr. GUERRERO. Thank you, Mr. Chairman. With me I have Mr. Robert Garland, our counsel.

On behalf of the Governor, and the Washington representative, Edward Pangelinan, we wish to thank you for giving us this opportunity to appear before this committee.

Of most importance to all of us is the Senate bill 1366 to require that people of the Northern Mariana Islands be treated as U.S. citizens for purposes of various Federal laws. This includes laws relating to political and civil rights, Federal programs and benefits, and Federal employment and diplomatic and consulate protection.

Mr. Chairman, I strongly urge that the committee report S. 1366 to the full Senate for passage at the earliest date.

The Government of the Northern Marianas fully supports section 3 of S. 589 as amended by the House of Representatives. The language of section 3 was mutually agreed upon by representatives of the Government of the Northern Mariana Islands and staff members of the House Committee on Interior and Insular Affairs. A deferral of the effective date on section 601 of the covenant established to the Commonwealth of the Northern Mariana Islands in political union with the United States and to taxable years beginning after December 31, 1985, will provide the Government of the Northern Marianas and the United States sufficient time to resolve problems associated with the application of the mirror image U.S. Internal Revenue Code in the Commonwealth.

The Department of the Interior and Treasury are working with the Commonwealth to draft and submit legislation to overcome the problem of the mirror code. Section 3 provides the House and the Senate committee with quarterly reports upon the progress made toward this goal.

We expect to submit remedial legislation to the Congress in late 1983 and we hope for early congressional approval.

In reference to the Clean Air Act, Mr. Chairman, we are in full support of legislation which will relieve the Northern Mariana Islands from the inappropriate application of the Clean Air Act. We testified last year to this committee that we would like to see this relief given to us.

The other thing is the land grant status for the Northern Marianas College. The Northern Mariana Islands is the only jurisdiction of the United States, including all of the other territories, which does not have a land grant college. Even the trust territory whose political ties and commitment to the United States are much more tenuous than those of the Northern Mariana Islands has a land grant college.

We urge this committee, Mr. Chairman, to include us in the land grant status. Mr. Chairman, I am submitting for the record the written views of the chief judge of the Commonwealth Trial Court of the Northern Mariana Islands and of the Commonwealth attorney general on S. 1366, and I also submit a proposed amendment to

Public Law 95-157 prepared by the Ninth Circuit of Appeals Judicial Conference.

In conclusion, we support the amendment to S. 589 made by the House of Representatives on October 3 which includes an increase in the mandatory waiver of matching funds for the Federal grant assistance for the Corps of Engineers on energy project authorization.

Thank you, Mr. Chairman.

[The prepared statements of Mr. Guerrero and Mr. Pangelinan follow:]

SUMMARY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS INDEED A PRIVILEGE FOR ME TO HAVE THE OPPORTUNITY, ON BEHALF OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, TO APPEAR ONCE AGAIN BEFORE THIS COMMITTEE. I WILL SUMMARIZE MY STATEMENT AND SUBMIT THE FULL TEXT OF MY STATEMENT FOR THE RECORD.

OF MOST IMPORTANCE TO ALL OF US IS SENATE BILL 1366 TO REQUIRE THAT THE PEOPLE OF THE NORTHERN MARIANAS BE TREATED AS UNITED STATES CITIZENS FOR PURPOSES OF VARIOUS FEDERAL LAWS. THESE INCLUDE LAWS RELATING TO POLITICAL AND CIVIL RIGHTS, FEDERAL PROGRAMS AND BENEFITS, FEDERAL EMPLOYMENT AND DIPLOMATIC AND CONSULAR PROTECTION.

MR. CHAIRMAN, I STRONGLY URGE THAT THE COMMITTEE REPORT S. 1366 TO THE FULL SENATE FOR PASSAGE AT THE EARLIEST POSSIBLE DATE.

TESTIMONY ON SECTION 3 OF S.589

THE GOVERNMENT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS FULLY SUPPORTS SECTION 3 OF S. 589 AS AMENDED BY

THE HOUSE OF REPRESENTATIVES. THE LANGUAGE OF SECTION 3 WAS MUTUALLY AGREED UPON BY REPRESENTATIVES OF THE GOVERNMENT OF THE NORTHERN MARIANAS AND STAFF MEMBERS OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.

A DEFERRAL OF THE EFFECTIVE DATE OF SECTION 601 OF THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES UNTIL TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1985 WILL PROVIDE THE GOVERNMENTS OF THE COMMONWEALTH AND THE UNITED STATES SUFFICIENT TIME TO RESOLVE THE NUMEROUS PROBLEMS ASSOCIATED WITH THE APPLICATION OF THE MIRROR IMAGE U.S. INTERNAL REVENUE CODE TO INCOME SOURCED IN THE COMMONWEALTH. THE DEPARTMENTS OF INTERIOR AND TREASURY ARE WORKING WITH THE COMMONWEALTH GOVERNMENT TO DRAFT AND SUBMIT LEGISLATION TO OVERCOME THE PROBLEMS OF THE MIRRORED CODE. SECTION 3 PROVIDES THE HOUSE AND SENATE COMMITTEES WITH QUARTERLY REPORTS UPON THE PROGRESS MADE TOWARD THIS GOAL. WE EXPECT TO SUBMIT REMEDIAL LEGISLATION TO THE CONGRESS IN LATE 1983, AND WE HOPE FOR EARLY CONGRESSIONAL APPROVAL.

CLEAN AIR ACT

MR. CHAIRMAN, WE ARE IN FULL SUPPORT OF LEGISLATION WHICH WOULD RELIEVE THE NORTHERN MARIANA ISLANDS FROM THE INAPPROPRIATE APPLICATION OF THE CLEAN AIR ACT.

I TESTIFIED BEFORE THIS SAME COMMITTEE LAST YEAR ON S.2090, A BILL WHICH WOULD HAVE GIVEN US THE RELIEF WE SEEK TODAY. THERE HAS NEVER BEEN ANY SUGGESTION BY ANYONE THAT THE REQUIREMENTS OF THE CLEAN AIR ACT ARE OF ANY BENEFIT TO OUR ISLANDS AND NO WITNESS WHO TESTIFIED ON S.2090 CLAIMED THERE WERE ANY SUCH BENEFITS. WE STRONGLY URGE YOU TO ENACT THIS LONG OVER DUE LEGISLATION.

LAND-GRANT STATUS FOR NORTHERN MARIANAS COLLEGE

THE NORTHERN MARIANA ISLANDS IS THE ONLY JURISDICTION OF THE UNITED STATES, INCLUDING ALL OF THE OTHER TERRITORIES, WHICH DOES NOT HAVE A LAND-GRANT COLLEGE. EVEN THE TRUST TERRITORY, WHOSE POLITICAL TIES AND COMMITMENTS TO THE UNITED STATES ARE MUCH MORE TENUOUS THAN THOSE OF THE NORTHERN MARIANA ISLANDS, HAS A LAND-GRANT COLLEGE.

THE ORIGINAL PURPOSE OF CONGRESS IN CREATING LAND-GRANT COLLEGES IN 1862 WAS TO BRING EDUCATION TO THE PEOPLE, MAKING IT ACCESSIBLE TO ALL. IT IS TIME FOR THE NORTHERN MARIANA ISLAND TO HAVE A LAND-GRANT COLLEGE.

MR. CHAIRMAN, I AM SUBMITTING FOR THE RECORD THE WRITTEN VIEWS OF THE CHIEF JUDGE OF THE COMMONWEALTH TRIAL COURT OF THE NORTHERN MARIANA ISLANDS AND OF THE COMMONWEALTH ATTORNEY GENERAL ON S. 1366, AND I ALSO SUBMIT A PROPOSED AMENDMENT TO PUBLIC LAW 95-157 PREPARED BY THE NINTH CIRCUIT COURT OF APPEALS

JUDICIAL CONFERENCE.

IN CONCLUSION, WE SUPPORT THE AMENDMENTS TO S. 589 MADE BY THE HOUSE OF REPRESENTATIVES ON OCTOBER 3, 1983, WHICH INCLUDE AN INCREASE IN THE MANDATORY WAIVER OF MATCHING FUNDS FOR FEDERAL GRANTS, ASSISTANCE FROM THE CORPS OF ENGINEERS AND ENERGY PROJECTS AUTHORIZATION.

THANK YOU MR. CHAIRMAN.

Office of the Representative to the United States
Commonwealth of the Northern Mariana Islands

MAIN OFFICE
2121 R STREET, N.W.
WASHINGTON, D.C. 20008
PHONE: (202) 328-3847
TELEX: MARIANAS 64561

MARIANAS HAWAII LIAISON OFFICE
SUITE 548
1221 KAPIOLANI BOULEVARD
HONOLULU, HAWAII 96814
PHONES: (808) 523-8156, 8434

STATEMENT OF

EDWARD DLG. PANGELINAN

Representative to the United States

Commonwealth of the Northern Mariana Islands

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

October 6, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS INDEED A PRIVILEGE FOR ME TO HAVE THE OPPORTUNITY, ON BEHALF OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, TO APPEAR ONCE AGAIN BEFORE THIS COMMITTEE, ESPECIALLY SINCE THE LEGISLATION UNDER CONSIDERATION TODAY GOES TO THE VERY HEART OF THE RELATIONSHIP BETWEEN THE PEOPLES AND GOVERNMENTS OF THE NORTHERN MARIANA ISLANDS AND OF THE UNITED STATES.

OF MOST IMPORTANCE TO ALL OF US ARE THE FAR-REACHING STEPS WHICH WOULD BE TAKEN UNDER SENATE BILL 1366 TO REQUIRE THAT THE PEOPLE OF THE NORTHERN MARIANAS BE TREATED AS UNITED STATES CITIZENS FOR PURPOSES OF VARIOUS FEDERAL LAWS. THESE INCLUDE LAWS RELATING TO POLITICAL AND CIVIL RIGHTS, FEDERAL PROGRAMS AND BENEFITS, FEDERAL EMPLOYMENT AND DIPLOMATIC AND CONSULAR PROTECTION.

AS THE COMMITTEE IS WELL AWARE, OUR PEOPLE REPEATEDLY EXPRESSED OUR DESIRE FOR U.S. CITIZENSHIP FOR OVER THIRTY YEARS. WHEN THE COVENANT WAS PUT BEFORE OUR PEOPLE IN PLEBISCITE WE EXERCISED OUR SOVEREIGN RIGHT OF SELF-DETERMINATION AND CHOSE FREELY AND WILLINGLY TO JOIN IN POLITICAL UNION WITH THE UNITED STATES. THAT WAS NOW OVER EIGHT YEARS AGO, HOWEVER, AND OUR COMMONWEALTH AND OUR U.S. CITIZENSHIP ARE STILL NOT QUITE

REALITIES. WE WERE REPEATEDLY GIVEN TO UNDERSTAND THAT THE TRUSTEESHIP AGREEMENT WOULD BE TERMINATED NOT LATER THAN THE END OF 1981. UNFORTUNATELY, THAT YEAR HAS COME AND GONE, AND 1983 IS ON THE WANE AS WELL, AND WE ARE STILL NOT FULL U.S. CITIZENS.

WHILE WE UNDERSTAND THAT THE NEGOTIATIONS AND OTHER PROCEEDINGS BETWEEN THE U.S. AND THE OTHER MICRONESIAN ENTITIES ARE MOVING TOWARD WHAT I AM SURE WILL BE A SATISFACTORY CONCLUSION, WE ARE NATURALLY CONCERNED THAT OUR OWN ARRANGEMENT, CONCLUDED SO LONG AGO, STILL REMAINS IN LIMBO. S. 1366, WHILE IT DOES NOT EXTEND FULL U.S. CITIZENSHIP TO OUR PEOPLE, IS AN IMPORTANT STEP IN FURTHER PERFECTING OUR RELATIONSHIP WITH OUR ADOPTED COUNTRY.

AS YOU KNOW, MR. CHAIRMAN, THIS IS NOT THE FIRST PIECE OF LEGISLATION WHERE WE HAVE SOUGHT TO OPEN DOORS OTHERWISE CLOSED TO US DUE TO THE CITIZENSHIP QUESTION. IN 1980, WE WERE VERY GRATIFIED THAT THE CONGRESS ENACTED PUBLIC LAW 96-351, WHICH ENABLED CITIZENS OF THE NORTHERN MARIANAS TO ENLIST IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA... AND ENLIST WE HAVE. THERE IS NOW AN ACTIVE ARMY RESERVE UNIT ON SAIPAN, AND RECRUITERS FROM ALL UNIFORMED SERVICES SPEAK IN GLOWING TERMS OF THE ENTHUSIASM AND PATRIOTISM OF OUR YOUNG PEOPLE SEEKING TO SERVE IN THE ARMED FORCES. I EXPECT THAT SIMILAR TREATMENT UNDER THE VARIOUS FEDERAL LAWS LISTED IN S. 1366 WILL, WHEN APPROPRIATE TO INDIVIDUAL CIRCUMSTANCES, BE EQUALLY AS

SUCCESSFUL.

I MIGHT ALSO POINT OUT, MR. CHAIRMAN, THAT SINCE THE INAUGURATION OF CONSTITUTIONAL GOVERNMENT IN JANUARY 1978, THE NORTHERN MARIANAS HAS EXTENDED TO THE PEOPLE OF THE UNITED STATES THE SAME SORTS OF PRIVILEGES IN OUR ISLANDS THAT WE ASK OF YOU HERE TODAY. EXCEPT IN THE OWNERSHIP OF LAND, WHICH, AS YOU KNOW, HOLDS A VERY SPECIAL PLACE IN THE CULTURE OF OUR PEOPLE, U.S. CITIZENS IN THE NORTHERN MARIANAS ENJOY THE SAME RIGHTS AS THE INDIGENOUS POPULATION. WE HAVE WAIVED ALIEN LABOR PERMITS, WE HAVE WAIVED FOREIGN INVESTMENT PROCEDURES, WE EVEN PERMIT RESIDENT AMERICANS TO RUN FOR ELECTIVE PUBLIC OFFICE! OUR COMMONWEALTH CONSTITUTION HAS BEEN COUCHED FROM THE BEGINNING IN TERMS OF U.S. CITIZENSHIP, NOT NORTHERN MARIANA CITIZENSHIP, SO EVEN DURING THIS TRANSITION, YOU HAVE THE SAME RIGHTS IN THE NORTHERN MARIANAS AS I DO. IT IS NO LESS THAN JUST FOR THE U.S. TO RESPOND IN KIND BY ENACTING S. 1366.

MR. CHAIRMAN,THIS LEGISLATION IS A DIRECT RESULT OF THE WORK OF THE COMMISSION ON FEDERAL LAWS, APPOINTED BY THE PRESIDENT PURSUANT TO SECTION 504 OF THE COVENANT. AS A MEMBER OF THAT COMMISSION, I CAN ASSURE YOU THAT MANY HOURS OF HARD WORK AND THOROUGH ANALYSIS WENT INTO OUR RECOMMENDATIONS. IN ESSENCE, WE ARE MANDATED BY LAW, AMONG OTHER THINGS, TO MAKE INTERIM REPORTS AS APPROPRIATE, CONSIDERING THE "POTENTIAL EFFECT OF EACH LAW ON LOCAL CONDITIONS WITHIN THE NORTHERN MARIANA ISLANDS, THE POLICIES EMBODIED IN THE LAW AND THE PROVISIONS AND

PURPOSES OF THIS COVENANT." I AM VERY PROUD AT THE MANNER IN WHICH THE MEMBERS OF THE COMMISSION, MAINLANDERS AND ISLANDERS ALIKE, WORKED TOGETHER IN A COOPERATIVE AND HARMONIOUS SPIRIT, WITHOUT PROVINCIALITY OR POLITICS CLOUDING OUR DELIBERATIONS. IT IS APPROPRIATE, THEREFORE, THAT S. 1366 TOUCHING AS IT DOES ON THE MEANS FOR A MORE COOPERATIVE AND HARMONIOUS RELATIONSHIP DURING THIS TRANSITIONAL PERIOD IS THE FIRST LEGISLATION TO BE CONSIDERED BY YOUR COMMITTEE FROM OUR RECOMMENDATIONS.

MR. CHAIRMAN, AS A MEMBER OF THE COMMISSION ON FEDERAL LAWS AND AS A PROUD AMERICAN, I STRONGLY URGE THAT THE COMMITTEE REPORT S. 1366 TO THE FULL SENATE FOR PASSAGE AT THE EARLIEST POSSIBLE DATE.

TESTIMONY ON SECTION 3 OF S.589

THE GOVERNMENT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS FULLY SUPPORTS SECTION 3 OF S. 589 AS AMENDED BY THE HOUSE OF REPRESENTATIVES. THE LANGUAGE OF SECTION 3 WAS MUTUALLY AGREED UPON BY REPRESENTATIVES OF THE GOVERNMENT OF THE NORTHERN MARIANAS AND STAFF MEMBERS OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.

A DEFERRAL OF THE EFFECTIVE DATE OF SECTION 601 OF THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES UNTIL

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1985 WILL PROVIDE THE GOVERNMENTS OF THE COMMONWEALTH AND THE UNITED STATES SUFFICIENT TIME TO RESOLVE THE NUMEROUS PROBLEMS ASSOCIATED WITH THE APPLICATION OF THE MIRROR IMAGE U.S. INTERNAL REVENUE CODE TO INCOME SOURCED IN THE COMMONWEALTH. THE DEPARTMENTS OF INTERIOR AND TREASURY ARE WORKING WITH THE COMMONWEALTH GOVERNMENT TO DRAFT AND SUBMIT LEGISLATION TO OVERCOME THE PROBLEMS OF THE MIRRORED CODE. SECTION 3 PROVIDES THE HOUSE AND SENATE COMMITTEES WITH QUARTERLY REPORTS UPON THE PROGRESS MADE TOWARD THIS GOAL. WE EXPECT TO SUBMIT REMEDIAL LEGISLATION TO THE CONGRESS IN LATE 1983, AND WE HOPE FOR EARLY CONGRESSIONAL APPROVAL.

CLEAN AIR ACT

MR. CHAIRMAN, WE ARE IN FULL SUPPORT OF LEGISLATION WHICH WOULD RELIEVE THE NORTHERN MARIANA ISLANDS FROM THE INAPPROPRIATE APPLICABILITY OF THE CLEAN AIR ACT.

I TESTIFIED BEFORE THIS SAME COMMITTEE LAST YEAR ON S.2090, A BILL WHICH WOULD HAVE GIVEN US THE RELIEF WE SEEK TODAY. THERE HAS NEVER BEEN ANY SUGGESTION BY ANYONE THAT THE REQUIREMENTS OF THE CLEAN AIR ACT ARE OF ANY BENEFIT TO OUR ISLANDS AND NO WITNESS WHO TESTIFIED ON S.2090 CLAIMED THERE WERE ANY SUCH BENEFITS.

OF MOST CONCERN TO US, MR. CHAIRMAN, IS THE REQUIREMENT

THAT MOTOR VEHICLES IN THE ISLANDS BE EQUIPPED TO USE UNLEADED FUEL AND CARRY ALL THE STANDARD U.S. ANTI-POLLUTION DEVICES. THE ADDED COST OF THIS EQUIPMENT IS A SEVERE FINANCIAL BURDEN TO OUR PEOPLE, WHOSE INCOME LEVEL IS VASTLY LOWER THAN THOSE OF OTHER PARTS OF THE UNITED STATES. IN ADDTION, THE FUEL REQUIRED FOR THESE TYPES OF VEHICLES IS NOT AVAILABLE IN THE ISLANDS.

MOST OF OUR MOTOR VEHICLES ARE IMPORTED FROM JAPAN. JAPAN PRODUCES TWO TYPES OF VEHICLES. ONE TYPE IS FOR THE UNITED STATES AND ONE TYPE IS FOR EVERYWHERE ELSE. THE U.S. VERSION IS EQUIPPED WITH THE POLLUTION CONTROL DEVICES AND ALL FEDERALLY REQUIRED SAFETY DEVICES. JAPAN DOES NOT AND WILL NOT PRODUCE A VEHICLE THAT DOES NOT MEET ENVIRONMENT STANDARDS BUT WHICH DOES MEET FEDERAL SAFETY STANDARDS. THUS AN EXEMPTION FROM THE FEDERAL SAFETY STANDARDS SHOULD ACCOMPANY ANY EXEMPTION FROM THE CLEAN AIR ACT.

WE DO NOT BELIEVE EXEMPTING THE NORTHERN MARIANAS FROM FEDERAL SAFETY STANDARDS WOULD EXPOSE OUR PEOPLE TO UNREASONABLE SAFETY HAZARDS AND WE WOULD OPPOSE SUCH AN EXEMPTION IF IT DID. GENERALLY, ISLAND SPEED LIMITS ARE LESS THAN 25 MILES PER HOUR WITH A MAXIMUM LIMIT OF 45 MILES PER HOUR IN A FEW AREAS. WE ARE MOST CONCERNED THAT OUR PEOPLE BE ABLE TO AFFORD A VEHICLE FOR TRAVEL TO WORK, MARKET, HOSPITAL AND CHURCH.

IN CONCLUSION, WE HAVE ALWAYS LIVED CLOSE TO THE SEA, THE

LAND AND THE AIR AND HAVE COUNTED OUR NATURAL BEAUTY AND CLEAN ENVIRONMENT AS A MOST VALUABLE HERITAGE. WE STRONGLY URGE YOU TO ENACT THIS LONG OVERDUE LEGISLATION.

LAND-GRANT STATUS FOR NORTHERN MARIANAS COLLEGE

MR. CHAIRMAN, I WOULD AT THIS TIME ALSO LIKE TO REQUEST LEGISLATION AUTHORIZING THE NORTHERN MARIANAS COLLEGE TO BE A LAND-GRANT COLLEGE. THE COMMISSION ON FEDERAL LAWS RECOMMENDED SUCH LEGISLATION AND I AM ATTACHING FOR YOUR USE ITS DRAFTED LEGISLATION. A MINOR CHANGE TO THAT DRAFT SUBSTITUTES THE "NORTHERN MARIANAS COLLEGE" FOR "AN INSTITUTION IN THE NORTHERN MARIANAS ISLANDS DESIGNATED BY THE LEGISLATURE OF THE NORTHERN MARIANA ISLANDS."

THE NORTHERN MARIANA ISLANDS IS THE ONLY JURISDICTION OF THE UNITED STATES, INCLUDING ALL OF THE OTHER TERRITORIES, WHICH DOES NOT HAVE A LAND-GRANT COLLEGE. EVEN THE TRUST TERRITORY, WHOSE POLITICAL TIES AND COMMITMENTS TO THE UNITED STATES ARE MUCH MORE TENUOUS THAN THOSE OF THE NORTHERN MARIANA ISLANDS, HAS A LAND-GRANT COLLEGE.

THE NORTHERN MARIANAS COLLEGE IN OPERATION SINCE 1976, WAS GIVEN STATUTORY AUTHORITY BY THE NORTHERN MARIANAS LEGISLATURE IN JANUARY, 1983. THE LEGISLATION CONVEYED TO THE COLLEGE TOTAL RESPONSIBILITY FOR HIGHER AND ADULT EDUCATION AND PROVIDED THAT THE COLLEGE SHALL "BE THE DESIGNATED LAND-

GRANT COLLEGE FOR THE COMMONWEALTH AND PROVIDE TRAINING, RESEARCH, AND RELATED EXTENSION SERVICES AS PROVIDED FOR IN LAND-GRANT LEGISLATION."

THE ORIGINAL PURPOSE OF CONGRESS IN CREATING LAND-GRANT COLLEGES IN 1862 WAS TO BRING EDUCATION TO THE PEOPLE, MAKING IT ACCESSIBLE TO ALL. THE PRINCIPAL SUBJECTS OF TEACHING WERE TO BE AND STILL ARE AGRICULTURE AND MECHANICAL ARTS.

THESE HISTORIC OBJECTIVES MATCH VERY WELL THE NEEDS OF THE COMMONWEALTH TODAY. THE EDUCATION AND TRAINING NEEDS OF OUR PEOPLE ARE VAST AND FOR MOST PURPOSES CAN BE MOST EFFICIENTLY AND ECONOMICALLY MET WITH COURSES AT OUR COLLEGE WHERE THE COURSES DIRECTLY REFLECT THE IDENTIFIED NEEDS OF OUR PEOPLE AND THE COMMUNITY. MOST OF THE 700 STUDENTS PRESENTLY ATTENDING THE COLLEGE ARE PART-TIME STUDENTS WHOSE JOBS PRECLUDE TRAVELLING ABROAD, EVEN TO GUAM, FOR STUDY.

THE POTENTIAL FOR AGRICULTURAL DEVELOPMENT IN THE COMMONWEALTH HAS NOT BEGUN TO BE REALIZED AND PRODUCTION TODAY IS A MERE FRACTION OF THAT IN THE 1930'S. THE EMPHASIS ON AGRICULTURE OF LAND-GRANT COLLEGES AND THE ASSISTANCE ENSUING FROM LAND-GRANT STATUS FOR AGRICULTURAL DEVELOPMENT, BOTH FINANCIALLY AND TECHNICALLY, WOULD BE OF OBVIOUS BENEFIT TO THE COMMONWEALTH.

IN THE COVENANT BETWEEN THE UNITED STATES AND THE

NORTHERN MARIANA ISLANDS THE UNITED STATES AGREED TO "ACHIEVE A PROGRESSIVELY HIGHER STANDARD OF LIVING FOR ITS PEOPLE AS PART OF THE AMERICAN ECONOMIC COMMUNITY AND TO DEVELOP THE ECONOMIC RESOURCES NEEDED TO MEET THE FINANCIAL RESPONSIBILITIES OF LOCAL SELF-GOVERNMENT." THE UNITED STATES HAS ALSO AGREED TO " MAKE AVAILABLE TO THE NORTHERN MARIANA ISLANDS THE FULL RANGE OF FEDERAL PROGRAMS AND SERVICES AVAILABLE TO THE TERRITORIES OF THE UNITED STATES." ENACTMENT OF THE PROPOSED LEGISLATION WOULD FURTHER EACH OF THOSE OBJECTIVES AND OBLIGATIONS.

CONCLUSION

IN CONCLUSION, MR. CHAIRMAN, I AM SUBMITTING FOR THE RECORD THE WRITTEN VIEWS OF THE CHIEF JUDGE OF THE COMMONWEALTH TRIAL COURT OF THE NORTHERN MARIANA ISLANDS AND OF THE COMMONWEALTH ATTORNEY GENERAL ON S. 1366, AND I ALSO SUBMIT A PROPOSED AMENDMENT TO PUBLIC LAW 95-157 PREPARED BY THE NINTH CIRCUIT COURT OF APPEALS JUDICIAL CONFERENCE.

THANK YOU, MR. CHAIRMAN.

9-19
Action –
Edward
Rios

Commonwealth Court
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROBERT J. HEFNER
CHIEF JUDGE
SAIPAN, MARIANA ISLANDS 96950

September 12, 1983

Honorable Edward DLG. Pangelinan
CNMI Washington Representative
Office of the Representative to
the United States
2121 R. Street, N.W.
Washington, D. C. 20008

Dear Eddie:

This weekend I was advised of S.B. 1366 as it relates to the Northern Mariana Islands.

As you recall, we discussed these matters previously and I spoke briefly to the House Committee headed by Congressman Won Pat.

Since that time significant developments have occurred. The Ninth Circuit Court of Appeals Judicial Conference was held in July. At this time the Pacific Territories Committee of the Federal Court system (Judges Kennedy, Nielsen and King) met with Judges Laureta, Ed King (FSM), Judges Burnett and Lanham (Marshalls), Duenas (Guam) and myself. After extended discussions and drafts, the enclosed has been agreed upon by the CNMI courts (both District and our Court), the Marshalls. FSM, and Palau.

The draft was sent to the Pacific Territories Committee on August 31, 1983 and if they approve (as previously indicated) it will be submitted to the U.S. Judicial Conference headed by Chief Justice Burger this month.

We were told at the Ninth Circuit Conference that the Justice Department is in accord and that if Secretary Watt can eliminate the cost of the High Court, he would be pleased to do so. Therefore, I am surprised and a little dismayed that this old rewrite (S.B. 1366) has again been submitted to the Senate.

Honorable Edward DLG. Pangelinan
September 12, 1983
Page 2.

Please enter our opposition to S.B. 1366, ask them to consider our draft, if approved by the U.S. Judicial Conference, and, in any event, the changes in Sections 213 and 214 must be altered to reflect the previous recommendations of the Pacific Territories Committee and the U.S. Judicial Conference.

I am leaving Saipan for California on personal business on September 18, 1983 and will be at my parents home until the end of September. If necessary, I can go to Washington to support our draft but you would have to contact me. The phone number is (619) 487-1482.

Your immediate attention to this matter will be appreciated. A lot of time and effort has gone into our draft and I would not like to see S.B. 1366 enacted.

I'll wait to hear from you.

Sincerely yours,

Enclosure:

Analysis and Support
of
Proposed Amendment

The proposed amendment is designed to accomplish several major objectives:

1. To eliminate the jurisdictional disputes in the Northern Mariana Islands between the High Court of the Trust Territory of the Pacific Islands (High Court) and the District Court for the Northern Mariana Islands (District Court).

2. Dispell any question as to the right of access to the Ninth Circuit Court of Appeals for appeals from the Appellate Division of the District Court.

3. Provide for a system of transfer of cases otherwise handled in the High Court, to the constitutionally established courts of the Federated States of Micronesia (FSM), Republic of the Marshall Islands (ROM), and the Republic of Palau (ROP).

4. Provide for discretionary review of judgments of courts of last resort of the FSM, ROM, and, ROP by way of writ of certiorari to the Ninth Circuit Court of Appeals in certain cases.and eliminate jurisdictional disputes between those courts of last resort and the Trust Territory High Court.

5. Provide for a means of paying judgments which may be rendered against the Trust Territory Government before and after any Compacts of Free Association are placed in effect.

This analysis will track the additions and amendments as presented in the proposed amendment.

SECTION 1.

This amendment would change the term of the Article IV (U.S. Constitution) judge in the Northern Mariana Islands to 10 years. This change is consistent with the change suggested by the Justice Department for the judges in Guam and the Virgin Islands. Having a 10-year term allows an Article IV judge to participate in the federal retirement program.

SECTION 2.

The first sentence of this section grants bankruptcy powers to the District Court. This suggestion is also that of the Justice Department.

The remaining sentences of this section present a departure from the prior suggestions made by the Justice Department.

In *Sablan Const. Co. v Government of the TTPI*, 526 F. Supp (D.C. NMI App. Div. 1981) the District Court assumed jurisdictio in a tax case involving the Trust Territory Government. In another pending case, *Temengiil v Government of the TTPI*, District Court of the NMI No. 81-0006, the District Court has assumed jurisdiction over a case involving governmental acts of the Trust Territory Government. The Trust Territory Government has contested the jurisdiction of the District Court and asserts the High Court should have jurisdiction. The proposed amendment would eliminate any doubt and vest jurisdiction in the District Court.

In *Diaz v Diaz*, D.C. NMI No. 81-0058, the District Court ruled that since January 9, 1978 (the effective date of the Constitutional Government of the Northern Mariana Islands) all decisions of the Trial Division of the High Court should have been appealed to the Appellate Division of the District Court and that the High Court Appellate Division no longer has jurisdiction to hear appeals still pending from Trial Division decisions rendered after January 9, 1978. According to the High Court there were 40 Mariana Islands appeals filed after January 9, 1978.

The High Court has rendered an opinion in *Diaz v Diaz*, Civ. App. 390 which comes to an exact opposite conclusion than that reached by the District Court. This jurisdictional dispute has created confusion and uncertainty for litigants, counsel and the courts. The proposed amendment would divest the High Court of any further trial division jurisdiction and place those remaining cases in the Commonwealth Trial Court for disposition and appeal as in any other case.

Appeal cases submitted for decision in the High Court would remain there for final decision and the others would be transferred to the District Court.

This will eliminate the jurisdictional disputes now existing and restore certainty to the appellate and trial process as well as eliminate the need for future involvement of the High Court in the Northern Mariana Islands.

SECTION 3.

This section is based on that previously suggested by the Justice Department except that subdivision (c) makes it clear that there is an appeal as a matter of right from decisions of the Appellate Division of the District Court to the Ninth Circuit Court of Appeals. This is consistent with the recommendation made by the Pacific Territories Committee in January, 1983, which recommendation has been approved by the Judicial Conference of the United States.

SECTION 4.

This section is the result of extended discussions with judicial officers from the FSM, ROM, and CNMI and members of the Pacific Territories Committee at the Ninth Circuit Judicial Conference, July 1983.

The matter of the establishment of the court systems in the FSM, ROM, and ROP and the transfer of cases from the Trust Territory Court system has been a concern that has lingered for some time but has now approached a point where definite action is necessary to carry out the commitment of the United States to give the maximum extent of governmental powers to the new political entities until the termination of the United Nations Trusteeship Agreement.

Department of Interior Secretarial Order 3039 established a method by which cases could be transferred from the Trust Territory court system to the new court systems. Review of decisions of the new courts is by a writ of certiorari to the Trust Territory High Court.

Section 4 provides a different approach in that once a new court system is established, manned by lawyer-judges in a court of record, and the new court is willing to assume jurisdiction of the Trust Territory court cases arising in its respective geographical area, the case(s) will be transferred on order of the new court and processed and disposed of according to its procedures and laws.

The Trust Territory High Court's jurisdiction to review judgments of the courts of last resort of the new governments will be eliminated as those respective courts meet the requirements of this legislation. In order to provide review of cases in which the Trust Territory Government is a party and in cases which involve the Trusteeship Agreement, treaties of the United States, etc., access to the Ninth Circuit Court of Appeals has been provided for by discretionary writ of certiorari.

This system of review is limited to those cases and only until the termination of the Trusteeship Agreement since at that time, the terms of the Compacts of Free Association will provide the manner of handling the cases.

The courts in the ROM and ROP are established and already meet the requirements of the Act. Lawyer-judges sit in the courts and they are courts of record. The Supreme Court of the Federated States of Micronesia is also established and manned. However, only one state court of the FSM, that of Yap, has been established. The state courts of Truk, Ponape, and Kosrae are at various stages of preparation. All of the state courts of last resort in the FSM will be courts of record. Until these state courts do begin functioning and comply with the requirements of this legislation, the Trust Territory Court system will continue to handle the cases which eventually will fall within the jurisdiction of the FSM state courts.

As of the end of June, 1983, the statistical report issued by the Trust Territory court system shows a total of 375 civil and criminal cases pending in the High Court; 264 of these cases have been pending over one year. Most of the cases (292) are pending in Truk and Ponape.

The total number of cases pending which may be subject to review by the Ninth Circuit Court of Appeals is currently 72. According to information received from the Trust Territory Attorney General's Office, the following is a listing of cases pending in which the Trust Territory Government is a party (excluding criminal prosecutions) and which could be subject to review by writ of certiorari pursuant to Section 4:

Truk	41
Marshalls	9
Palau	12
Ponape	4
Yap	2
Kosrae	4
	72

A summary review of the types of cases and the numbers leads to the conclusion that only a minimal number of cases could be expected to advance to the point of a petition to the Ninth Circuit Court of Appeals for review. Additionally, the Trust Territory Government is winding down its activities which should reduce the amount of litigation in which it is a party.

A cost analysis of carrying out the provisions of Section 4 supports the conclusion that a net savings of approximately the total amount of the budget of the Trust territory High Court system would accrue to the U.S. taxpayers. This is estimated to be $400,000.

SECTION 5.

This section provides a means to pay judgments rendered against the Trust Territory Government and also makes it clear that no new cause of action is formed by the legislation. Reference is had to the Compact to clarify that judgments rendered by the new courts will be treated as High Court judgments for payment purposes.

SECTION 6.

Affirms the proposition that Section 4 will be implemented only until the end of the Trusteeship Agreement. Under the terms of the Compacts of Free Association which the United States has negotiated with the FSM, ROM and ROP an avenue of appeal and review of certain cases is had to the Federal Circuit Court of Appeals.

PROPOSED AMENDMENT

To Public Law 95-157; 91 Stat. 1265; 48 USC
Section 1694

Sec. 1 - Section 1 (b)(1) of the Act of November 8, 1977 (91 stat. 1265; 48 U.S.C. Sec. 1694 (b)(1) is amended by substituting the words "for the term of ten years" for the "term of eight years."

Sec. 2 - Section 2 (a) of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694a (a)) is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States. In addition thereto, any cases which the District Court of the Northern Mariana Islands has already assumed jurisdiction in which the government of the Trust Territory of the Pacific Islands is a party shall remain in the District Court for final adjudication. All cases arising in the Northern Mariana Islands and pending in the trial division of the High Court of the Trust Territory of the Pacific Islands shall be transferred to the Commonwealth Trial Court of the Commonwealth of the Northern Mariana Islands for adjudication. Any appeal therefrom shall be to the Appellate Division of the District Court of the Northern Mariana Islands. All cases arising in and pending in the Northern Mariana Islands in the Appellate Division of the High Court of the Trust Territory of the Pacific Islands and not submitted for decision shall be transferred to the Appellate Division of the District Court of the Northern Mariana Islands for disposition and any appeals therefrom shall be to the United States Circuit Court of Appeals, Ninth Circuit. Any matter already submitted to the Appellate Division of the High Court shall be disposed of expeditiously but if not decided within six months from the effective date of this Act, shall be transferred to the Appellate Division of the District Court for disposition.

Any remand or enforcement of a High Court Appellate Division decision shall be addressed in the Commonwealth Trial Court. Thereafter, any further appeals shall be to the Appellate Division of the District Court and thereafter to the United States Court of Appeals for the Ninth Circuit.

Any cases filed hereafter in the Northern Marianas in which the government of the Trust Territory of the Pacific Islands, its agencies, instrumentalities, officers or employees is a party shall be filed in the Commonwealth Trial Court or the District Court of the Northern Mariana Islands pursuant to the laws regarding jurisdiction between the two courts and shall be disposed of as in the case of any other matter.

Sec. 3 - Section 3 of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694 b) is amended to read as follows:

"Sec. 3(a) Prior to the establishment of an appellate court for the Northern Mariana Islands the District Court shall have such appellate jurisdiction over the courts established by the Constitution or laws of the Northern Mariana Islands as the Constitution and laws of the Northern Mariana Islands provide, except that such Constitution and laws may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant), or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Northern Mariana Islands or of any orders or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands with the Constitution, treaties, or laws of the United States, including the Covenant, or with any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the District Court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the Appellate Division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1(b)(2) of this Act: Provided, That only one of them shall be a judge of a court of record of the Northern Mariana islands. The concurrence of two judges shall be necessary to any decision by the District Court for the Northern Mariana Islands on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the Appellate Division of the District Court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

Sec. 4. There is hereby added a new section 1694(c)(c) to 48 USC 1694(c) which is to read as follows:

(c)(1). The constitutionally established courts of the Federated States of Micronesia (FSM), Republic of the Marshall Islands (ROM) and Republic of Palau (ROP) may assume jurisdiction over cases in which the government of the Trust Territory of the Pacific Islands, or its agencies, instrumentalities, officers or employees is a party; provided that the respective court determines it is authorized by the constitution and laws establishing it to otherwise take jurisdiction of the case, is a court of record and the case or cases are heard and decided by judges who are attorneys at law.

(c)(2). The United States Court of Appeals for the Ninth Circuit is authorized to review, by discretionary writ of certiorari and according to procedures and standards adopted by court rule, final judgments of the courts of last resort of FSM, ROM, and ROP:

(a) In cases in which the government of the Trust Territory of the Pacific Islands, or its agencies, instrumentalities, officers or employees is a party;

(b) All other cases, provided that such powers of review may be exercised only to rectify judgments found to be inconsistent with the United Nations Trusteeship Agreement –

for the Former Japanese Mandate Islands or with existing treaties, laws or regulations of the United States generally applicable in the Trust Territory of the Pacific Islands.

(c)(3) All cases pending in the High Court of the Trust Territory of the Pacific Islands shall be transferred to the appropriate courts of the FSM, ROM, and ROP upon the order of the respective court. Provided, that if a case has been submitted to the appellate division of the High Court for decision, that court shall continue to have jurisdiction until decided unless no decision is rendered within six months of submission and, in such event, the matter shall be transferred to the appropriate appellate court of the FSM, ROM or ROP for re-argument and/or submission. Any remand or enforcement of such decision shall be to the appropriate court of the FSM, ROM and ROP. Any High Court Trial Division matter not transferred by order of the appropriate court of the FSM, ROM or ROP shall be expeditiously decided and judgment rendered. Any appeal therefrom shall be to the appropriate appellate court of the FSM, ROM, or ROP as the case may be. In the event the appropriate court to receive the cause has not been established pursuant to law, the High Court shall continue jurisdiction and dispose of the matter or transfer the matter when the court is established and upon order of that court. The Trust Territory High Court shall have no authority or jurisdiction to review or modify any action or decision of a constitutionally established court in the FSM, ROM, or ROP.

(c)(4) Within 60 days of the effective date of this Act, the High Court of the Trust Territory of the Pacific Islands and the affected courts of the FSM, ROM or ROP shall meet and confer to plan and schedule the transfer of cases and to carry out the purposes of this Act to assure the efficient administration of justice. The High Court shall supply and distribute to all courts a list of its pending trial and appellate division cases within the 60-day period.

(c)(5) High Court cases shall be transferred to the courts with jurisdiction in the geographical area where the case was filed with the High Court, and shall be transferred pursuant to the laws in that area regarding jurisdiction, as determined by those courts pursuant to the constitution and laws of the jurisdiction of the FSM, ROM, and ROP.

(c)(6) Any judicial branch physical assets not previously transferred by the government of the Trust Territory to the FSM, ROM, or ROP shall remain in place and become the assets of the new court systems.

Sec. 5. Section 6 of the Act of November 8, 1977 (91 Stat. 1267; 48 USC 1694(e) is amended by adding the following:

Any judgments rendered against the government of the Trust Territory pursuant to the provisions of this Act shall be paid from such funds as may be appropriated by the Congress of the United States for that purpose.

For the purposes of the Compacts of Free Association, (should they become effective) between the United States and the FSM, ROM, and ROP, judgments rendered by the courts of the FSM, ROM, and ROP shall be deemed to be rendered by the High Court of the Trust Territory of the Pacific Islands.

No new or separate cause of action is intended or created by this Act.

Sec. 6. Section 4 of this Act shall cease to have effect upon the termination of the United Nations Trusteeship Agreement for the Trust Territory of the Pacific Islands as it is terminated in the respective jurisdictions of the FSM, ROM, and ROP.

0107 09/120
MARIANAS64561

TODAY: 9/12/83 2:30 PM SLT

TO: EDDIE PANGELINAN
WASHINGTON REP. OFFICE
WASHINGTON D.C.

SUBJECT: S. 1366 (CITIZENSHIP/COURTS)
COMMITTEE ON ENERGY & NATURAL RESOURCES (10/6/83)

OUR REVIEW OF S. 1366 CAUSES GREAT CONCERN OVER SECTION 214 RE: APPELLATE JURISDICTION OF NINTH CIRCUIT OVER NMI CASES.

RE CRIMINAL CASES: BY ALLOWING APPEAL OF FEDERAL QUESTIONS (INCLUDING COVENANT) TO NINTH CIRCUIT, SECTION 214 SOLVES OUR +GUAM V. OKADA+, 694 F.2D 565 (1982) PROBLEM WE RAN INTO IN +ATALIG+.

RE CIVIL CASES: SECTION 214 ALLOWS APPEAL OF FEDERAL QUESTIONS ONLY. WE WANT LOCAL CASES APPEALABLE AS WELL. CHIEF JUDGE HEFNER STRONGLY SUPPORTS US. CNMI BAR ASSN. AGREES. NINTH CIRCUIT TOOK TESTIMONY IN SAIPAN ON 1/28/83. ALL LOCAL GROUPS TOOK OUR POSITION. US JUDICIAL CONFERENCE IN APRIL APPROVED NINTH CIRCUIT RECOMMENDATION OF NMI RIGHT TO APPEAL ON ALL CASES. IN PAST 4 YEARS ONLY .13 PERCENT OF NINTH CIRCUIT CASES ORIGINATED IN NMI. APPEAL TO FEDERAL COURT ENSURES: 1) QUALITY JUDICIAL DECISION-MAKING (OTHERWISE LOCAL JUDGE HAS FINAL WORD) 2) UNIFORMITY WITH US LEGAL SYSTEM AND LAWS. UPON REQUEST I CAN SEND HEFNER/NINTH CIRCUIT VERSION OF SECTION WHICH WE ENDORSE. PLEASE OPPOSE S. 1366 AT THE 10/6/83 HEARING. THANK YOU.

REXFORD C. KOSACK SENDS
CNMI AG OFFICE
SAIPAN, CNMI

.....
RESPOND TO 622GOVNMI
VIA WUI

Draft Legislation

An Act to authorize establishment of a land-grant institution in the Northern Mariana Islands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Section 506 of Public Law 92-318, 86 Stat.235, as amended is further amended to read as follows:

> (a) The College of the Virgin Islands, the Community College of American Samoa, the College of Micronesia, the University of Guam and the Northern Marianas College shall be considered land-grant colleges established for the benefit of agriculture and mechanic arts in accordance with the provisions of the Act of July 2, 1862, as amended (7 U.S.C. ss 301-05, 307-08).
>
> (b) In lieu of extending to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) those provisions of the Act of July 2, 1862, as amended, relating to donations of public land or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated $3,000,000 to the Virgin Islands, $3,000,000 to Guam, $3,000,000 to the Northern Mariana Islands and an equal amount to American Samoa and to the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands.) Amounts appropriated pursuant to this section shall be held and considered to have been granted to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) subject to the provisions of that act applicable to the proceeds from the sale of land or land scrip.

Sec. 2 Subsection (c) of Section 1361 of Public Law 96-374, 94 Stat. 1367, is amended to read as follows:

> Any provision of any act of Congress relating to the operation of or provision of assistance to a land-grant college in the Virgin Islands or Guam shall apply to land-grant colleges in American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) in the same manner and to the same extent.

Sec. 3. Section 5 of the Act of August 30, 1890, c.841, 26 Stat. 417 (The Second Morrill Act), as added by Section 506(c) of Public Law 92-318, 86 Stat. 235, and as amended (7 U.S.C. section 326a), is further amended to read as follows:

There is authorized to be appropriated annually for payment to the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) the amount they would receive under this Act if they were states. Sums appropriated under this Section shall be treated in the same manner and be subject to the same provisions of law, as would be the case if they had been appropriated by the first sentence of this act.

Sec. 4 Section 22 of the Act of June 29, 1935, c.338, 49 Stat. 439, as amended (7 USC section 329) is further amended --

(a) by striking out "and Guam" wherever it appears and inserting in lieu thereof "Guam,and the Northern Mariana Islands";

(b) by striking out "$8,100,000 and inserting in lieu thereof "$8,250,000"; and

(c) by striking out "$4,360,000" and inserting in lieu thereof "$4,380,000".

Sec. 5. The first sentence of Section 3(b)(2) of the Act of May 8, 1914, c.79, 38 stat. 372, as amended (7 U.S.C. section 343), is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

Sec. 6 Section 10 of the Act of May8, 1914, c.79,38 Stat. 372, as added by Section 1(i) of Public Law 87-749, 76 Stat. 745, and as amended (7 U.S.C. section 349), is further amended to read as follows:

The term "State" means the States of the Union, Puerto Rico, the Virgin Islands, Guam and the Northern Mariana Islands.

Sec. 7. Notwithstanding subsection (4) of Section 1404 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. section 3103(4)), the Northern Marianas College pursuant to Section 506(a) of Public Law 92-318 (86 Stat. 235) as amended by Section 1 of this Act, shall not be required, in order to qualify as a "College" or "University" for purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended to (1) provide an educational program for which a bachelor's degree or any other higher degree is awarded or (2) be accredited by a nationally recognized accrediting agency or association.

Sec. 8. The first sentence of Section 3(b)(2) of the Act of August 11, 1955, c. 790, 69 Stat. 671, as amended (7 U.S.C. section 361c(b)(2))is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

Senator Weicker. Thank you all very much for your testimony. We greatly appreciate it. Thank you.

Our last witness is the Honorable Anthony Kennedy, Chairman of the Pacific Territories Committee of the Judicial Conference of the United States.

Mr. Kennedy. Thank you, Mr. Chairman. Good morning.

Senator Weicker. Good morning.

STATEMENT OF HON. ANTHONY M. KENNEDY, U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. Kennedy. For the record, I am Anthony Kennedy, a Ninth Circuit of the United States circuit judge. I have noted that each of the witnesses here has thanked you for calling these hearings, and that is more than simply a requisite format.

Some of the matters that we will be talking about may seem like minor, technical, jurisdictional types of things, but I assure you that in these islands these matters are viewed with great serious concern and some degree or urgency.

This concept of a judicial link or participatory tie in Government through the courts is viewed by all of the citizens of these islands in the Pacific as being fundamental and of very great importance, and I was frankly surprised at that when I began to visit the islands and to hear these cases, so if in a major commercial dispute they find there is no diversity jurisdiction, if in an appeal by the prosecution of the Government of Guam they find out they cannot appeal a dismissal of an indictment, if the legislature of Guam is considering the necessity for an appellate court and they find out they don't have that authority, this is perceived by them as a matter of serious neglect, and by us as a source of real embarrassment in the furtherance of our judicial duties, so I would ask, Mr. Chairman—and I am not an expert on legislative procedures—but to the extent feasible and practicable, that you could identify those portions of the judicial bill affecting Guam and the Marianas that are noncontroversial and seek their speedy enactment, and this includes the restoration of the diversity jurisdiction, the right of this Government to dismissal of indictments in criminal cases, the right of the Government of Guam to establish its independent court system.

Now there is an area of disagreement between our committee's recommendation and the representative of the Guam bench, Judge Abbate, as to how long and how close the ninth circuit review should be maintained over local and appellate court systems. I think there is an area of compromise there and perhaps working with your committee we could quickly reach that and advise you.

The Guam bar, in our hearings on Guam, were the ones that were insistent that the ninth circuit review be maintained intact, but perhaps there is an area of compromise there. We now have mandatory review in all of their cases, and this is sometimes trouble because in the case where the result is clear, the appeal is frivolous, and if one party has an economic position, it may be that the right of appeal is abused. There are some measures we can take care of by the briefs. Most of our oral arguments are held in Honolulu which is the halfway point, and an important commercial point for the members of the bar, so these matters we think are working well, and our court I am pleased to say is current on all of our calendar, including the cases from Guam and the Northern Marianas. There is a source of delay at the appellate division down at the district court, and various provisions of the bills that you have before us for our comments have indicated how that can be streamlined.

We do object or recommend against some portions of the bill pertaining to the high court of the Trust Territory of the Pacific, and to this complete elimination of ninth circuit jurisdiction. Those comments are on the record.

I might say, Mr. Chairman, that if it is consistent with your rules and practice, that your consultant, Mr. James Beirne, in the few times I have talked with him, reveals an extensive knowledge and scholarship in the area of territorial law, and I have learned a great deal from him. He is a highly skilled expert, and I am very grateful for the comments that he has given me as I have prepared this report.

I have no further comments, Mr. Chairman. I thank you for holding these hearings.

[The prepared statement of Mr. Kennedy follows:]

Statement of Anthony M. Kennedy
United States Circuit Judge
For the Ninth Judicial Circuit

Before the Subcommittee on Energy Conservation
and Supply of the United States Senate

S. 1366, 98th Cong., 1st Sess. (1983)

October 6, 1983

Mr. Chairman, Members of the Subcommittee on Energy Conservation and Supply:

Thank you for the invitation to appear before your Committee to comment upon S. 1366, as introduced May 25, 1983. My name is Anthony M. Kennedy; I am a United States Circuit Judge for the Ninth Judicial Circuit. The Circuit has within its jurisdiction Guam and the Northern Mariana Islands. I am currently chairman of the Pacific Territories Committee of the Judicial Conference of the United States and Chairman of the Pacific Territories Committee for the Ninth Circuit. My appearance here and the comments set forth below are expressly authorized by the Judicial Conference of the United States. My remarks are confined to those segments of the bill concerning Guam and the Commonwealth of the Northern Mariana Islands.

I.

Sections 209 and 210
Guam District Court Jurisdiction
Organic Act § 22

It is generally understood that the principal purpose of this amendment is to grant diversity jurisdiction to the District Court of Guam. This corrects the jurisdictional flaw found by the Supreme Court in *Chase Manhattan Bank (N.A.) v. South Acres Development Co.*, 434 U.S. 236 (1978). We request the Committee support and approve this important provision.

The urgency for enacting the statutory amendment must be underscored. Major commercial and financial interests, now located in Guam or considering it for potential future operations, have serious concerns with lack of diversity jurisdiction. If the present jurisdictional problem remains uncorrected, commerical activity in Guam may be deterred. The matter is sufficiently important so that if complexities or uncertainties with respect to other parts of S. 1366 may delay its passage, the Committee should consider the possibility of a separate bill granting diversity jurisdiction to the Guam District Court.

Before the Supreme Court's decision in the *Chase Manhattan Bank* case, it had been assumed quite widely that the Guam District Court had diversity jurisdiction. The jurisdictional omission found by the Supreme Court apparently stems from an oversight in drafting. I know of no objection to the proposal to grant diversity jurisdiction.

The language parallels the grant of jurisdiction to the Northern Mariana Islands, which is understood to include the diversity jurisdiction. The language appears to accomplish its intended purpose. Nevertheless, we recommend explicit mention in the Committee's report of an intent to correct the defect found by the Chase Manhattan Bank case.

II.

Local Appellate Courts
Organic Act Section 22A

Section 22A permits the legislature of Guam to establish a local appellate court. Our committee supports the proposal. As recognition of autonomy for the territory to structure its own system and as an expression of congressional confidence, the Guam legislature should be authorized to create a local appellate court if it deems it necessary to do so.

At hearings on Guam, our committee found that most of those who spoke in favor of granting Guam this authority felt that the establishment of such a court is not urgent, and probably not prudent now. Thus, the territorial legislature may decide not to create a local appellate structure until it is clear that the permanent institution is needed and its costs are warranted. The evaluation of the costs and benefits of the local appellate court, and the timing of its creation, should be left to the discretion of the Guam legislature. The proposed bill is consistent with that objective.

Please note, however, that the committee concludes, as discussed below, that review of some or all of the local law decisions rendered by such a court should be retained in the Ninth Circuit until such time as the territorial legal system evolves further. This is also consistent with the positions expressed by most members of the Guam bench and bar.

III.

Review of Local Appellate Courts
Organic Act Section 22B

This portion of the bill provides that the Ninth Circuit will retain jurisdiction to review final decisions of a Guam appellate court to resolve federal questions and questions on the consistency of local laws with the Organic Act. This jurisdiction is to expire fifteen years after the creation of a local Guam appellate court. After that time the Guam court would be treated in the same manner as the court of a state; review of its decisions involving federal questions would be exclusively in the Supreme Court of the United States.

The committee, and the Judicial Conference of the United States, objects to this provision.

(1) The Ninth Circuit should retain appellate jurisdiction over all classes of cases, including local law cases. A substantial number of members of the bench and bar of Guam agree with our position. The Guam bar has adopted a formal resolution to that effect. Guam is a close knit legal community, where outside review is deemed highly beneficial to the evolving legal system. The legal system on the island benefits greatly from the Ninth Circuit guidance and from contact with mainland jurisprudence. The Ninth Circuit is not burdened by appeals from Guam and the Northern Mariana Islands. The appeals from both entities combined comprise less than 1 percent of our caseload. We can continue to handle these cases expeditiously.

(2) It is recognized that the fifteen year time period, with a limitation of review to federal questions only, is consistent with what is already provided for the Commonwealth of the Northern Mariana Islands. The attempt to achieve parallelism, however, is not so simple as it might seem. In my view, the likelihood of Guam establishing an appellate court is far greater than that of the Northern Mariana Islands. Thus, it is likely that the Northern Mariana Islands would maintain a closer contact with Article III courts than would Guam, under the proposed provisions of the bill.

(3) After a local appellate court on Guam has been established, becomes permanent, and demonstrates to the Guam bench and bar and to its citizens that it has the institutional expertise to render final judgment on local law issues, consideration should be given to relinquishing Ninth Circuit jurisdiction.

Consideration could also be given, at or before that time, to a certiorari type of jurisdiction so that the Ninth Circuit could review cases decided by the Guam local appellate courts where that review appeared necessary, without taking review of cases in which the result appears clearly correct or for other prudential reasons. If the Committee is determined to restrict Ninth Circuit review of local law matters now, certiorari would be preferable to total foreclosure; in that way, at least in some local law cases, Ninth Circuit review would be retained. Our recommendation now, however, is to permit review as a matter of right in all cases decided by the Guam local appellate courts.

IV.

Appellate Division of the District Court Organic Act Section 22C

Subsection (a) of section 22C provides that the Guam legislature will determine the appellate jurisdiction of the appellate division of the District Court of Guam provided that appellate review of federal questions and of the consistency of local law, regulation, or executive action with the Organic Act, is mandatory. The proviso for the mandatory jurisdiction is not contained in existing law, though the Guam legislature currently vests appellate jurisdiction in such matters in the appellate division. The change is a very desirable one, and I am aware of no opposition to it.

The rephrasing of this subsection was also intended to ensure that the result in Sablan v. Santos, 634 F.2d 1153 (9th Cir. 1980), whereby district court decisions in the Northern Mariana Islands have to be appealed to the appellate division of the district court prior to appeal to the Ninth Circuit, will not be extended to Guam. Reference to this intent in your Committee's report is warranted.

The composition of the appellate division is addressed in subsection (b). The committee has no objection to this subsection. The subsection is, however, unclear as to who designates or presides over the panel if the district judge disqualifies himself or is otherwise unable to act. If the district judge is recused or disqualified, the Chief Judge of the Ninth Circuit should designate the members of the appellate division and its presiding judge.

Subsection (c) proposes to take away Ninth Circuit review of local law decisions of the appellate division of the district court. The committee opposes the suggestion. In effect it would mean that a judge of the District Court of Guam, a local law judge he designates to sit with him, and an outside judge assigned to the appellate division, would become the Supreme Court for Guam. This is inconsistent with the close relation the Ninth Circuit has maintained with the judicial and legal system of Guam. All of the objections made to section 22B respecting denial of Ninth Circuit review of local law in the event an appellate court system is established (see above) apply with even greater force to this section of the bill. The judges of the Ninth Circuit are familiar not only with federal laws, but the laws of the nine states within their jurisdiction. We are advised by members of the Guam bar that our decisions are of substantial assistance to the legal system of Guam in the formulation and interpretation of the territorial law. This benefit should not be taken from Guam unless a compelling showing is made that Ninth Circuit expertise and guidance is unneeded or unwanted. No such showing has been made to date. Indeed, the curtailment has not been suggested by any commentator, so far as I am aware. I must observe that many of us were greatly surprised at the proposal. It was not suggested or considered as a possibility by any of those who appeared.

before our committee at its hearings on Guam. We wonder if the proposal is the result of some drafting oversight.

V.

Application of Titles 18 and 28
Organic Act Section 22D

Section 22D provides that parts of Titles 18 and 28 of the United States Code shall apply to Guam. It is not clear that this language will be sufficient to remedy certain critical statutory lapses.

For instance, Guam v. Okada, 694 F.2d 565 (9th Cir. 1982), held the Guam legislature could not authorize appeals of criminal cases by its government from the appellate division of the district court to the Ninth Circuit. That decision puts Guam, and potentially the Commonwealth of the Northern Mariana Islands, in a less favorable position than the federal government, the government of every state, and the government of the Virgin Islands. 18 U.S.C. § 3731; Virgin Islands v. Christensen, 673 F.2d 713 (3d Cir. 1982). No justification is perceived for this result. The decision of the Okada court should be overturned by statute.

It is not clear, however, that the proposed language does this. The section is prefaced by the words "where appropriate." The Okada court identified certain policy reasons for requiring specific congressional authority for criminal appeals. If the intent of the bill is to overrule Guam v. Okada, more precise language should be used. Immediate congressional action is recommended to overturn the decision.

There is a second important problem that the Committee should address. In Ware v. United States, 699 F.2d 474 (9th Cir. 1983), the Ninth Circuit indicated that the Federal Youth Corrections Act could be interpreted not to apply in the District of Guam, and, inferentially, in the District of the Northern Mariana Islands. I call to your attention that the language of section 22D does not resolve the question one way or the other. After considering the views of the Department of Justice, if the Congress determines that the Youth Corrections Act should apply to Guam, additional and specific language is necessary to cure the deficiency noted in the Ware case. Until our committee is advised of the position of the Justice Department and of interested officials and representatives of the government, the committee has taken no position with respect to the Federal Youth Corrections Act's applicability. We think the Congress should study the problem, and promptly reach a decision on Youth Act coverage.

Except where more specific language is needed as indicated above, the committee has no objection to the language of section 22D.

VI.

Guam
Section 210
Term of Judge on District of Guam

The committee has no objection to the provisions of section 210 which extends the term of territorial judges from eight years to ten years.

VII.

Northern Mariana Islands
Section 212
Term of Judge for District of Northern Mariana Islands

The committee has no objection to the provisions of section 210 which extends the term of territorial judges from eight years to ten years.

VIII.

Section 213
Jurisdiction of District Court
Act of Nov. 8, 1977 § 2(a)

The law establishing the jurisdiction of the District Court for the Northern Mariana Islands is amended by section 213 of the Act so that that district court has jurisdiction over the Trust Territory of the Pacific Islands substantially as provided for foreign governments in the Foreign Sovereign Immunities Act (FSIA) 28 U.S.C. §§ 1602-1611. This section would pretermit an evolutionary development whereby that district court is assuming jurisdiction over some matters involving the government of the Trust Territory. See Sablan Construction Co. v. Government of the Trust Territory of the Pacific Islands, 526 F. Supp. 135 (D.N.M.I. App. Div. 1981).

In a period when the government of the Trust Territory is changing its relation to the people of the islands of the West Pacific, we think it inappropriate to stifle evolving jurisdiction of the district court over the action of the Trust Territory government. While the committee has no objection to a congressional grant of jurisdiction over the Trust Territory substantially as provided under the Foreign Soverign Immunities Act, it objects to provisions which limit jurisdiction to that grant.

The whole question of lack of Article III review over decisions of the government of the Trust Territory, and of the jurisdiction of the High Court of the Trust Territory vis a vis the newly established courts on the Marshall Islands, the courts of the Federated States of Micronesia, and the courts of the Republic of Palau, is currently under examination by our committee. We plan to report on the subject to the Judicial Conference of the United States and thereafter to the Congress.

Further, the present language is both overinclusive and underinclusive of the FSIA standards. The present language does not exempt the Trust Territory from punitive damages, see 28 U.S.C. § 1606, or limit the role of attachment and execution. See 28 U.S.C. §§ 1609-1611. Section 213 on the other hand provides for no jurisdiction in the case of explicit or implicit waiver of immunity by the Trust Territory, see 28 U.S.C. § 1605(a)(1), or over counterclaims, see 28 U.S.C. § 1607. Further, Trust Territory officers and employees are granted jurisdictional immunity for all acts or omissions "colorably related to their official duties." No such broad immunity is given to the employees of foreign governments under the FSIA, and the language is puzzling, to say the least. It seems to contradict the waiver of immunity that has gone before. We recommend against enactment of this amendment.

IX.

Section 214
Local Appellate Jurisdiction
Act of Nov. 8, 1977 § 3(a)

We recommend adoption of section 3(a), and know of no opposition to it. The language limits the appellate division of the district court to review only of judgments and orders of courts established by the Constitution and laws of the Northern Mariana Islands. This overturns the unfortunate result of Sablan v. Santos, 634 F.2d 1153 (9th Cir. 1980), which held that the district court had to review cases originating there in its own appellate division prior to appeal to the Ninth Circuit. Also, as in the case of Guam, new language is added guaranteeing that the appellate division will have jurisdiction to review decisions of local courts on federal questions, interpretation of the covenant, and acts of United States officers. Again, this is a desirable addition. We know of no opposition.

X.

Composition of Appellate Division
Act of Nov. 8, 1977 § 3(b)

The committee has no objection to this section. As noted with regard to the identical provision for Guam, section 22C(b) of the Organic Act, the present language is inadequate in the case of disqualification or recusal of the district court judge as Presiding Judge. The Chief Judge of the Ninth Circuit, in that event, should act in his or her place.

XI.

Ninth Circuit Review
Act of Nov. 8, 1977 § 3(c)

We object to section 3(c). This would eliminate the jurisdiction of the Court of Appeals for the Ninth Circuit to review local law questions from the Commonwealth of the Northern Mariana Islands. The same considerations apply here as to the suggestion to limit jurisdiction over local law cases in Guam. There was unanimity among all witnesses at the committee's Northern Mariana Islands hearing to retain Ninth Circuit review of local law questions. The committee strongly recommends against adoption of the proposal to eliminate this jurisdiction, and again notes its surprise at the suggestion.

XI.

Conclusion

Though the populations of Guam and the Commonwealth of the Northern Mariana Islands are small, a study of those islands and an understanding of their people leaves one profoundly impressed with their unyielding commitment to a strong, close, and effective participation in the American political system. The United States courts are perceived, quite correctly, as a vital part of this link. Accordingly, we thank the Committee for giving its attention to the problems of jurisdiction and judicial structure contained in this bill. It may be that further and additional legislation will be required to bring our judicial ties with these islands to a full development. The provisions of the bill upon which we express a negative recommendation are destructive of that objective; the provisions of the bill we endorse are important steps to its achievement.

We appreciate the Committee's consideration of our testimony.

Senator **Weicker**. Thank you very much, and we will be working with you on that in reaching some compromise, and Jim will be in touch with you.

Mr. **Kennedy**. It's not often that I can be an active participant in formulating a process that can overrule the decisions of some of my colleagues.

Senator **Weicker**. Thank you very much. We will be adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS 00801

August 31, 1983

Honorable John E. Chapoton
Assistant Secretary for Tax Policy
Department of the Treasury
Washington, D.C. 20220

Dear Secretary Chapoton:

Recently we received a discusssion draft from your staff containing proposed changes to the income tax relationship between the Virgin Islands and the United States. This document is a result of the very beneficial discussions between our staffs which have been ongoing since last spring.

After reviewing the document I am extremely encouraged because almost all of the concepts it endorses are acceptable to my federal tax task force, the V.I. Bureau of Internal Revenue, and to me. I fully endorse the concepts contained in the document with respect to individual taxation and administration. With respect to corporate taxation, there appear to be a few technical issues which still must be resolved and I trust that our respective staffs will continue to work together on them.

However, I also have an important policy concern with respect to the corporate taxation issue which I would like to raise with you. It is my understanding that the Treasury Department is currently negotiating with the Netherlands Antilles for a new tax treaty which may continue the advantage now enjoyed by those islands as an attractive location for so-called "international finance subsidiaries" designed to funnel foreign investment into the United States with little or no U.S. taxation. It is also my understanding that your Department is conducting a continuing dialogue with the territory of Guam regarding Guam's desire to become a location for these types of investments. Finally, I am aware that Treasury's official position is in support of the Conable-Gibbons bill to repeal the 30% tax for certain types of income, which if passed, would eliminate the need for "international finance subsidiaries."

The Virgin Islands is also very interested in attracting "international finance subsidiaries" to our territory because of the jobs, and economic stimulus such companies could generate. I am concerened that, should the Conable-Gibbons bill not be enacted, and should the Virgin Islands assent to the corporate taxation provisions suggested in the recent Treasury discussion draft and should they be enacted, the Virgin Islands would be put at a competitive disadvantage not only with regard to the Netherlands Antilles but also with regard to our sister territory of Guam. I believe that we need to resolve this issue swiftly and move on to the drafting stage on our jointly developed mirror system proposal. I look forward to hearing your thoughts and suggestions on this matter.

I wish to take this opportunity to briefly address two other issues as well. First, I wish to reaffirm my commitment to work with you and the office of the United States Trade Representative to lobby in support of the recently introduced "DISC-replacement" legislation. This bill would make a very significant contribution to the economic future of the Virgin Islands and we are preparing to do everything we can to attract to our Territory as many as possible of the new "foreign sales corporations" once the bill is enacted.

Finally, I am working with a member of the Virgin Islands Legislature to explore the possibility of establishing a "captive insurance" industry in the Virgin Islands. Currently we are studying all the implications of this type of investment in the Territory. Soon we will be in a position to begin discussions with the Treasury Department to learn your views on the issue.

I expect that our future discussions, and the consultations of our respective staffs, on these and other issues will be as fruitful as those we have conducted thus far on the mirror system.

Sincerely yours,

Juan Luis
JUAN LUIS
Governor

cc: Attached List

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS 00801

September 2, 1983

Honorable Lowell P. Weicker, Jr.
Chairman
Subcommittee on Energy Conservation and
  Supply
United States Senate Committee on Energy
  and Natural Resources
Washington, D.C. 20510

Dear Senator Weicker:

Thank you for your recent letter seeking my views on S.1366, S.1367 and the House Interior and Insular Affairs Committee amendments to S.589. I understand that these matters will be the subject of a hearing before the subcommittee on October 6. In this letter, I would like to share with you my views on these bills. Also, I request that I be given an opportunity to testify at the October 6 hearing to further explain and to update my position.

S.1366 - Sections 201 through 208 of Title II of this bill are identical to sections 101 through 108 of S.2729 of the 97th Congress. These sections, which are the only portion of this bill on which I shall comment, are based on the judicial reform portion of a draft bill prepared by the Justice Department, at your request, following the defeat at the polls of the Fourth Proposed Constitution of the Virgin Islands nearly two years ago.

I have taken a consistent position on the court reform issue since you first began pursuing this issue in 1981, even before the defeat of the Constitution. I favor meaningful court reform in the Territory which will give the people of the Virgin Islands more control over the judicial branch of government. I believe that the only significant drawback to this increase in local antonomy is that the people of the Virgin Islands will have to bear the additional costs involved in running a full fledged judicial branch, something which we are not presently in a position to do.

Fortunately, it is the apparent intent of Title II of S.1366 to deal with this problem by delaying implementation of its provisions regarding a local appellate court until such time as the legislature establishes such a court. (As I will discuss below, a minor amendment may be necessary to clarify that this is in fact the intent). In the meantime, the Virgin Islands would be able to enjoy many of the benefits that a local appellate court would provide by the immediate establishment of an appellate division of the federal district court. As I have stated in previous testimony and correspondence, I favor these concepts.

In September 1982, I testified before the Senate Energy and Natural Resources Committee in general support of S.2729 with a few changes that would make it more nearly reflect my position. At that time, it did not appear that there was any opposition to the bill locally. However, this past February, Delegate deLugo circulated locally his version of S.2729 (H.R. 6859 introduced in the 97th Congress). As a result, both a local senator and the Virgin Islands Bar Association have taken positions on the legislation of which you should be aware. I shall give you my comments on their positions after I review two changes I believe are necessary in S.1366; however, I suggest that you also consider their views independently and make your own judgment as to their merits.

I suggest the following two changes in S.1366: First Section 203 of S.1366 contains language that would give exclusive jurisdiction to the District Court of the Virgin Islands over all civil and criminal cases regarding the income tax laws of the Virgin Islands. I oppose this change in existing law and I urge that this language be deleted from the bill for three reasons: (1) The Virgin Islands income tax law, although a "mirror" of the federal law, is considered a local tax. Therefore continued local administration of the tax law is appropriate and should be maintained at the present level, or increased, rather than cut back as proposed in the administration draft. (2) At present the Attorney General of the Virgin Islands prosecutes criminal income tax cases within the jurisdictional limits of the Territorial Court in that forum. Because the Attorney General does not have authority to conduct criminal prosecutions in the District Court without permission from the U.S. Attorney, this proposed change is likely to hinder criminal tax law enforcement in the Territory. (3) As you know, the Virgin Islands Government has been negotiating with the U.S. Treasury Department regarding needed changes to the "mirror system" of taxation. If the administration believes there is a need for change on this issue, it should be discussed as part of that negotiation process.

The second change I advocate in S. 1366 is also in Section 203. I recommend that the word "exclusively" be inserted in the proposed revised Section 22 (b) of the Revised Organic Act prior to the word "vested" in line 7, page 19 of the bill. As I stated above I believe this change is required in order to clarify that the intent of the bill is to permit the Virgin Islands, through enactment of a local statute, to decide when the local government will have to bear the increased costs involved when matters now subject to the concurrent jurisdiction of the local and federal courts become the exclusive province of the local courts.

As I understand their position, the V.I. Bar Association supports my second suggested change. The Association has also drafted a bill which effectively supports my first suggested change as well, but because the Association commented on H.R. 6859, which did not contain the language to which I object, the Association made no specific reference to the tax jurisdiction issue.

The Bar Associaton also suggests three other changes First, the Association advocates that grand juries not be required in the Virgin Islands. Second, the Association suggests that upon their next appointment, Virgin Islands District Court judges become life-tenured "Article III" judges. I have no objections to either of these suggestions. Finally, the Association takes the position that there should be no appellate division established in the district court. As I have stated before, I see no major disadvantages to such an arrangement while the one major advantage of having appeals heard by three judges instead of one, as provided by the legislation, is a much needed reform in the Territory's judicial system. Therefore, I urge that this change in the bill suggested by the Bar Association be rejected.

As I understand it, it is the position of the local senator that because the voters rejected the proposed constitution (which contained provisions generally similar to those appearing in the legislation) "it would be inappropriate for Congress to make major revisions to the structure of the Virgin Islands government without the prior approval of the people of the Virgin Islands in referendum." This position apparently rejects the idea that the people of the Virgin Islands (through their locally elected representatives) are mature enough to make their own decisions, because it apparently advocates keeping power to organize the local court system in the Congress rather than transferring that power to the local legislature. I find this position indefensible and I totally reject it. I urge you to do likewise. Unless one considers the establishment of an appellate division of the district court a "major revision to the structure of the Virgin Islands government" (which I do not), the legislation would not significantly affect the operation of the local government judicial system until such time as the local legislature mandates such change. Thus, if it so chooses, the Legislature could hold a referendum before it acts, but there would appear to be no reason for Congress not to empower the legislature to make changes in the system at the time such changes are deemed desirable locally.

S.1367 - It appears that this bill is designed to repeal obsolete provisons of Title 48, United States Code, relating to territories. After review of the provisions to be repealed, it appears that each of them is either unnecessary or its subject matter is covered by a more modern statute. Therefore, I have no objection to this bill.

House Interior and Insular Affairs Committee Admendment to S.589 - I shall confine my comments to Sections 4, 5 and 7 of the bill, as amended by the Committee, because these are the only sections that relate to the Virgin Islands.

Section 4 authorizes the second $10 million of the Virgin Islands Government's 4-year $40 million plan to upgrade the Territory's deteriorating water distribution and power distribution and transmission systems. It also permits both the first and second $10 million appropriations for this purpose to be in the form of a grant or loan from the federal government. In light of Congressional reluctance to make grants in the full amount of the Territory's well-documented needs in this area (only $1 million has been appropriated thus far), I stated earlier this year that we would accept an arrangement whereby 50% of the monies received for this project could be in the form of grants and the balance in direct long-term low-interest loans. Because this section permits the flexibility needed to make this type of arrangement, I favor it. Even though the financing mechanism recently approved by the House Appropriations Committee, whereby the Territory would be expected to borrow the entire $40 million through a bond issue, would be more expensive for the Territory, I would also favor such an arrangement if there were no other alternative.

Section 5 of the bill makes two progressive changes in federal statutes relating to the Virgin Islands which I have advocated in the past. These changes are the elimination of the federal requirement for a loyalty oath for local government employees and elimination of federal restrictions on the expenditures by the Virgin Islands of excise taxes returned to the Territory. While I do not oppose a loyalty oath per se, I believe it should be the decision of the local government, not the federal government, whether or not one should be required. Elimination of federal approval of expenditures from the excise taxes returned to the Territory is consistent with the treatment of these taxes with respect to Puerto Rico and with respect to the foreign rum excise taxes to be returned to the Virgin Islands and Puerto Rico under the Caribbean Basin Initiative. Also, this change is desirable in order to avoid the delays, occassionally experienced at present, in obtaining the required federal approval. Both of these proposals would grant increased automony to the Territories, and I favor them.

Finally, I favor Section 7 of the bill which would help permit implementation of any program or project recommended in the comprehensive energy plan of each of the Territories. I believe it is important to do whatever is possible to encourage the development of renewable energy resources in the Virgin Islands, and this provision is a good step in that direction.

I hope you have found these comments helpful and I look forward to seeing you again at next month's hearing.

Sincerely yours,

Juan Luis

JUAN LUIS
Governor

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS 00801

September 7, 1983

Honorable Lowell P. Weicker, Jr.
Chairman
Subcommittee on Energy Conservation and
Supply
United States Senate Committee on Energy
and Natural Resources
Washington, D.C. 20510

Dear Senator Weicker:

In addition to the comments regarding S.1366 contained in my letter to you of September 2, 1983, I have the following additional comments.

As I stated in testimony before the Senate Energy and Natural Resouces Committee on September 13, 1983, regarding S.2729 (the predecessor to S.1366), I object to the proposed 15-year transition period in Section 204 of S.1366 during which appeals from the local appellate court would still have to be made to the U.S. Court of Appeals for the Third Circuit. As I have stated previously, I would prefer that this transition period be reduced to five years or eliminated altogether so that, immediately upon establishment, appeals from the appellate court of the Virgin Islands will be handled in the same way as those from the highest court of any state, that is, by appeal to or by a petition for a writ of certiorari filed with the Supreme Court of the United States.

Sincerely yours,

Juan Luis

JUAN LUIS
Governor

Office Of Compiler Of Laws

(formerly Guam Law Revision Commission)

162 O'HARA ST., AGANA, GUAM 96910
PHONE: 477-8937

CHARLES H. TROUTMAN
COMPILER OF LAWS

October 5, 1982

The Honorable Lowell Weicker,
Chairman
Subcommittee on Energy, Conservation and Supply
United States Senate
Washington, D.C.

Dear Senator Weicker,

I wish to submit my testimony on Bill S.1366 relative to the judicial system of Guam. I thank Judge Paul J. Abbate for presenting it to you as I cannot be present in person.

As background, I am Compiler of Laws of Guam, former Attorney General, and I have worked with this issue ever since the Legislature attempted to create our own Supreme Court in 1974. While Attorney General, I argued, unsuccessfully, before the Supreme Court in the case of People v. Olsen, wherein that Court determined that the Organic Act, as it is written, did not give the people of Guam the power to create our own court system.

I strongly support the concept of Guam being able to have its own court system similar to that existing in Puerto Rico and in the several states. Guam has been given powers of self-government in the areas of the executive (elected Governor) and legislative branches. However, the judicial system on Guam is not a full part of the government of Guam, but is controlled by the Ninth Circuit Court of Appeals, which acts as the Supreme Court of Guam for all practical purposes. (Only two cases from have been decided on their merits by the U.S. Supreme Court.) I believe that Guam's appellate system should be an integral part of the government of Guam as chosen by the people of Guam. Bill S.1366 goes part way in achieving this goal, but not far enough.

In general, Bill S.1366 answers many of the problems presented in similar bills introduced in the last session of Congress. However, several problems remain which, if unanswered in this Congress, will continue to cause litigation and uncertainty.

First, new §22(a) continues the statement that the "judicial authority of Guam" is vested in the District Court of Guam and in the locally created courts. The District Court, most recently in People v. Quitugua, (not yet reported) continues to resist any attempts of the Guam Legislature to give additional powers to the District Court since general jurisdiction was removed by the 1974 Court Reorganization Act. The Ninth Circuit has not had a direct opportunity to rule on this question recently, though it has disagreed with the District Court on this issue in the past. In any event, the question must be clarified, perhaps as it was done in the Covenant of the CNMI. There, it was stated that the Legislature could remove and replace jurisdiction in the District Court of the CNMI. The obscurity of the Guam language was noted in the legislative history of the Covenant.

The particular issue crops up on page 28, line 5 of the bill. Existing language is continued. By this, one might assume, unless you are the District Court, that the Legislature still has some power over the local jurisdiction of the District Court. It needs to be clarified. Either the general removal of jurisdiction created an irrevocable condition in 1974, or the Guam Legislature can repeal or modify that act to create new jurisdiction in the District Court as conditions warrant. Whatever the intent, it should be clear.

Secondly, fifteen years of continuing 9th Circuit jurisdiction over is a bit too long - once the local appellate structure is established. I think that half that time would be adequate.

Thirdly, on page 31, line 5-6, why should the Appellate Division of the District Court, before the creation of a local appellate court, be limited to one local judge. In the past, two local judges have sat with no problems. Problems do exist when we have to have judges from off-island. Even coordination with Saipan has been a problem. So long as the local judges have no conflicts, they should sit. After all, this same act permits us to establish a local appellate court with, presumably, all local judges.

Thirdly, I strongly object to subsection (c) found on p. 31, line 14 - p. 32, line 11. As long as we have a federal appellate court, we should have full access to the 9th Circuit. After all, appointments to this bench, even temporary ones, are federal. It has been my experience that many of our worst decisions have come from courts in which off-island judges have written the opinion, particularly off-island judges from the Trust Territory or the CNMI. There are exceptions, of course, but, so long as we must have these judges for our appellate court, we should have a full check on them by the 9th Circuit. Once Guam gets full control of its judiciary, then the need for 9th Circuit control lessens to about what it is in this Bill.

Fourth, the Ninth Circuit recently ruled, in People v. Okada, that federal law as now enacted does not permit appeals by the government of Guam to the 9th Circuit in criminal cases, even where local law expressly permits the government to appeal (in limited circumstances, of course). This, despite the U.S. Supreme Court's decision in Manypenny. Therefore, this act really should be amended, so long as the Ninth Circuit hears Guam cases of any sort, to permit the government to appeal where local law permits such appeal.

Finally, I still believe that any federal law permitting Guam to have an appellate court system should create that system, as was done by H.R. 4580 in 1975. The Legislature should not have full control over the Courts, because when it does, the courts are not a true, independent, third branch of government. Past history has shown that the Legislature must be restrained by a constitutional document when governing the supposedly independent third branch of government. This really means that Guam needs a constitution, but that seems unlikely in the near future, until the status questions have been decided. I suggest that the structure of H.R. 4580 be followed, establishing a Guam Supreme Court, with the jurisdiction of the 9th Circuit and other matters continued as found in S.1366, or as I have suggested be amended.

Thank you for your consideration of my views.

Sincerely yours,

Charles H. Troutman
CHARLES H. TROUTMAN
Compiler of Laws

Seventeenth Guam Legislature
P.O. Box CB-1, Agana, Guam 96910 - Tel: 472 - 6216

SENATOR EUGENE D. RAMSEY
CHAIRMAN

Committee on
Federal, Foreign, and
Legal Affairs

Testimony of

SENATOR EUGENE D. RAMSEY

on

SB1366

the

U.S. CONGRESS

Though I am unable to appear personally in support of enactment of SB1366, I respectfully request the Committee include this testimony in its hearing record on the measure. The Presiding Judge of the Superior Court of the Territory of Guam, Mr. Paul J. Abbate, will be appearing before you personally to offer testimony in support of the measure and answer any questions you may have relative to the legislation and its critical importance to full development of our judiciary system.

As Chairman of the Seventeenth Guam Legislature's committee with oversight of Guam's judiciary system, I introduced on February 1, 1983, Resolution No. 50 urging Congress to provide for a local appellate court, with interim appellate jurisdiction vested in the Ninth Circuit Court of Appeals. This Resolution, unanimously adopted by the Legislature on September 30, 1983, is enclosed for your reference and review.

While I strongly support a majority of the provisions of SB1366, there exist several items which warrant further clarification or amendment.

First, regarding new §22(a), the District Court, most recently in *People v. Quitugua*, refuted attempts by the Guam Legisture to grant additional powers to the District Court. Such general jurisdiction was removed in the 1974 Court Reorganization Act. It should be noted that in the Covenant of the CNMI, the Legislature can remove and replace jurisdiction in the District Court of the CNMI. The obscurity of the Guam language was noted in the legislative history of the Covenant and, as such, should be clarified, particularly on page 28, line 5 of the bill.

Secondly, fifteen years of continuing 9th Circuit Jurisdiction is excessive. I would recommend a period of only five years--which is adequate. In addition, jurisdiction in the 9th Circuit should be limited to the same jurisdiction as the U.S. Supreme Court has over a state court. They should not have total jurisdiction.

Thirdly, on page 31, line 5-6, the Appellate Division of the District Court, before the creation of a local appellate court, is limited to one local judge. In the past, two local judges have sat with no problems and I would recommend such a system be continued.

Fourthly, subsection (c) on page 31, line 14 - page 32, line 11, should be deleted. Full access to the 9th Circuit must be allowed as long as we have a federal appellate court. As long as we must have these off-island judges for our appellate court, we should have a full check on them by the 9th Circuit. Once we have full control of our judiciary, then the need for 9th Circuit control lessens substantially.

I appreciate the opportunity to offer these comments on SB1366 and, after consideration of the amendments proposed here, urge enactment of the measure into law.

Eugene Ramsey

EUGENE D. RAMSEY

SEVENTEENTH GUAM LEGISLATUE
1983 (FIRST) Regular Session

Resolution No. 50
(Substitute)

Introduced by: E. D. Ramsey, T. S. Nelson, M. D. A. Manibusan
P. C. Lujan
J. F. Ada
J. P. Aguon
E. P. Arriola
E. T. Charfauros
E. R. Duenas
C. T. C. Gutierrez
F. J. Gutierrez
M. K. Hartsock
A. C. Lamorena III
D. Parkinson
J. F. Quan
F. J. Quitugua
J. T. San Agustin
F. R. Santos
T. V. C. Tanaka
J. H. Underwood
A. R. Unpingco

Relative to requesting that the Congress of the United States Act favorably to permit Guam to establish its own Judicial system, including a Court of Appeals for Guam and that, in the interim, the Government can appeal certain criminal cases to the Ninth Circuit Court of Appeals.

BE IT RESOLVED BY THE LEGISLATURE OF THE TERRITORY OF GUAM:

WHEREAS, Guam was given a measure of self-government through the Organic Act and now elects our own Governor and members of the Legislature; and

WHEREAS, by Public Law 12-85 of the Twelfth Guam Legislature, the people created an appellate system for Guam, including a Supreme Court of Guam, which would have given Guam's courts the same degree of local control as the other two branches of government; and

WHEREAS, the United States Supreme Court held, in People of the Territory of Guam v. Olsen, 431 U. S. 195, 97 S.Ct. 1774 (1977) that the Organic Act did not permit the people of Guam to create a local system of appeal; and

WHEREAS, Congress has, from time to time, considered bills which would give Guam, or permit Guam to create, a local court system similar to those of the 50 states, but none passed; and

WHEREAS, the people of Guam still desire to have the power to create a local appellate system; and

WHEREAS, in the interim while Guam has no control of who may and may not appeal cases from the District Court of Guam to the Ninth Circuit Court of Appeals, the Ninth Circuit Court held that the government of Guam may not appeal criminal cases to it even where such appeal was permitted by local law; and

WHEREAS, the Ninth Circuit Court of Appeals, in People v. Okada, No. 80-1233 (1982), stated further that it is "the function of the Congress to decide whether to initiate a departure from the historical pattern of restricted appellate jurisdiction in criminal cases;" and

WHEREAS, the Seventeenth Guam Legislature believes that the people of Guam should have the same right to appeal erroneous decisions as have the Defendants, subject to constitutional and statutory limitations, to the same degree as permitted by the U. S. Constitution to the states in similar circumstances; now, therefore, be it

RESOLVED, that the Seventeenth Guam Legislature urges the Congress and the Executive Branch of the United States to favorably consider the rights of the people of Guam, as United States citizens, and to amend, or support the amendment of, the Organic Act of Guam and appropriate federal statutes to permit Guam to create and complete a local system of courts and to control its own courts to a similar degree as occurs within the 50 states and Puerto Rico; and be it further

RESOLVED, that the Seventeenth Guam Legislature requests Congressman Won Pat to introduce and support federal legislation which, while Guam still does not control its own court system, would authorize the government of Guam to appeal certain criminal cases (as specified and limited by the Constitution and local law) to the Ninth Circuit Court of Appeals; and be it further

RESOLVED, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Presiding Judge of the Superior Court; to the Honorable Anthony M. Kennedy, Chairman of the Pacific Territories Committee of the Judicial Conference of the United States; to Congressman Antonio B. Won Pat; to the Chairman of the Judiciary Committees of the Senate and House of Representatives of the United States Congress; to the Attorney General of the United States; to the Honorable James Watt, Secretary of the Interior; and to the Governor of Guam.

DULY AND REGULARLY ADOPTED ON THE 30TH DAY OF SEPTEMBER 1983.

ELIZABETH P. ARRIOLA
Senator and Legislative Secretary

CARL T. C. GUTIERREZ
Speaker

Legislature of the Virgin Islands
Capitol Building
P.O. Box 477 • Charlotte Amalie • St. Thomas • Virgin Islands • 00801
809 • 774-2696/809 • 774-0880

LORRAINE L. BERRY
SENATOR
CHAIR
COMMITTEE ON GOVERNMENT
OPERATIONS, PLANNING &
PUBLIC SERVICES

VICE CHAIR
COMMITTEE ON FINANCE
VICE CHAIR
VIRGIN ISLANDS WOMEN LEGISLATORS

MEMBER
COMMITTEE ON RULES &
NOMINATIONS

October 3, 1983

Honorable Lowell P. Weicker, Jr.
Chairman
Committee on Energy and Natural Resources
Room 366, Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman:

I was asked by the Virgin Islands Delegate to the U.S. House of Representatives, Ron deLugo, to testify before your Committee on October 6, 1983 relative to Bill No. S. 1366. But unfortunately, as Vice Chair of the Committee on Finance of the Virgin Islands Legislature, I am unable to accede to the Delegate's request because the Committee is in the process of marking up the budget for the 1984 Fiscal Year.

However, I have prepared a written statement of my position on Bill No. S. 1366 which is enclosed herewith along with 30 copies for the convenience of Committee members. I would greatly appreciate if you would have my position statement entered into the record for the consideration of your Committee.

Sincerely,

Lorraine L. Berry

Lorraine L. Berry
Chair
Committee on Government
Operations, Planning and
Public Services

Enclosures (30)

cc: Honorable Ron deLugo
Virgin Islands Delegate

STATEMENT BY SENATOR LORRAINE L. BERRY
CHAIR
COMMITTEE ON GOVERNMENT OPERATIONS, PLANNING AND PUBLIC SERVICES,
LEGISLATURE OF THE VIRGIN ISLANDS

to the

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
UNITED STATES SENATE
REGARDING BILL NO. S. 1366

I am strongly opposed to Bill No. S. 1366 because its enactment would have the net effect of forcing down the throats of the people of the Virgin Islands one of the most controversial sections of the draft constitution which was rejected by the electorate in November 1981 by a margin of 60% to 40%.

In adopting the enabling legislation which authorized the people of the Virgin Islands to adopt their own constitution for local self-government, Public Law 94-584, October 21, 1976, Congress recognized the basic democratic principle of "government by the consent of the governed," (Senate Report No. 94-1033). Were the Congress to now override the wishes of the people of the Virgin Islands as expressed at the polls, the words "government by the consent of the governed" would ring hollow and be devoid of meaning.

I am not unmindful that there are those who have suggested that the proposed legislation would simply grant the people of the Virgin Islands another increment of home rule by allowing them to decide the issue of court reform themselves. But that suggestion is fallacious and unpersuasive. In the first place, an appellate division of the District Court of the Virgin Islands (two federal judges and one territorial judge) would be instituted. This is the same "stew" (by another name) of the "interim" appeltate court which was part of the judicial section of the draft constitution rejected by the voters in 1981. Yet, under the terms of the proposed legislation, the people of the Virgin Islands would have no opportunity to block the establishment of the proposed appellate division. Second, the Legislature would be empowered to create a local court of appeals without the prior approval of the people in referendum.

I respectfully submit that inasmuch as Congress has already empowered the people of the Virgin Islands to organize the three branches of their government pursuant to a constitution of their own choosing, it would be inappropriate for Congress to tamper with the structure of the Virgin Islands government without the consent of the people of the Virgin Islands as expressed in a referendum.

It is my unshakable belief that those who desire to have changes made in the judicial system in the Virgin Islands should address their concerns to the people of the Virgin Islands. Congress should not be asked to make "end runs" around the people of the Virgin Islands in violation of basic principles of democratic procedure.

Statement by Senator Lorraine L. Berry
to the Committee on Energy and Natural Resources, U.S. Senate
Regarding Bill No. S. 1366

For all of the foregoing reasons, I respectfully urge that Bill No. S. 1366 be rejected, or, that it be amended to provide that none of its provisions shall take effect unless they shall have first been approved by the people of the Virgin Islands in referendum.

Lorraine L. Berry

Lorraine L. Berry
October 3, 1983

VIRGIN ISLANDS BAR ASSOCIATION
POST OFFICE BOX 6526, ST. THOMAS, U.S. VIRGIN ISLANDS 00801 • TELEPHONE (809) 774-1320

BOARD OF GOVERNORS:
GEORGE H. T. DUDLEY, JR.
RHYS S. HODGE
PAUL HOFFMAN
RONALD T. MITCHELL
ROLAND B. SCOTT

OFFICERS:
PRESIDENT - HENRY C. SMOCK
PRESIDENT-ELECT - DEREK M. HODGE
SECRETARY - PATRICIA D. STEELE
TREASURER - GREGORY E. MILLER

September 30, 1983

The Honorable Lowell P. Weicker
United States Senate
Chairman, Subcommittee on Energy,
Conservation and Natural Resources
Dirksen Office Building
Washington, D.C. 20515

Dear Senator Weicker:

On behalf of the Virgin Islands Bar Association, I would like to take this opportunity to make the following general comments concerning S. 1366.

The House Interior Subcommittee on Insular Affairs in February of this year expressed a desire to reconsider legislation presented in the 97th Congress relating to changes in the Territories' judicial systems. A meeting was conducted in St. Thomas on Tuesday, February 15, 1983 with members of the local judiciary, the Virgin Islands Bar, the Honorable Antonio Won Pat, Chairman of the Subcommittee, the late Congressman Philip Burton, the Honorable Ron De Lugo, and Mr. Jeffrey Farrow of the House Interior Committee staff. At the conclusion of that meeting the committee members requested language be submitted to carry on the work begun in the 97th Congress.

As a result, a special committee was created by the Virgin Islands Bar Association and an ad hoc committee was convered to discuss and prepare revisions to H.R. 6859. The Virgin Islands Bar Association also met and at a general membership meeting presented and decided the following questions:

1. Do you favor conferring upon the District Court of the Virgin Islands status as an Article III Court with the right of life tenure of its Judges? The membership voted overwhelmingly in favor of this position.

2. Does the Virgin Islands Bar Association wish to go on record in support of the position that the Virgin Islands Legislature be granted the authority to establish, when appropriate and affordable, a Virgin Islands court system of exclusive jurisdiction on local issues, including the establishment of an appellate court? A majority of the membership favored this position.

3. Does the Virgin Islands Bar favor the creation of an interim appellate structure pending implementaion of the local court system? The membership voted unanimously against this position.

4. Do you favor the continued exemption of the Virgin Islands from the requirement of indictment by grand jury? The membership again unanimously endorsed such continuing exemption.

5. Will the Bar Association authorize the Committee on Legislation and Law Reform to develop the necessary changes in language to H.R. 6859 consistent with the position taken by the V. I. Bar? A majority of the membership favored this position.

Subsequent to that meeting, a substitute for H. R. 6859 with respect to judicial provisions relating to the Virgin Islands was drafted and forwarded by me to Delegate De Lugo, a copy of which is enclosed, along with an analysis of the draft. The Bar Association strongly recommends that similar amendments be incorporated into S. 1366.

I believe I can speak for the members of the committee as well as myself in saying that we hope that we have your continued support for court reform. Your strong support for a local court system in the Virgin Islands is certainly appreciated.

I stand ready to assist you in whatever way that I can towards the implementation of a local court system for the Virgin Islands and, although I regret not being able to appear before the Subcommittee on Energy, Conservation and Natural Resources on October 6, 1983, I will be happy to meet with you in the future to discuss this proposal or any other proposal with respect to court reform.

Kindest regards.

Sincerely yours,

Henry C. Smock
President

/mgw

cc: The Honorable Juan Luis, Governor
The Honorable Ron De Lugo, Delegate
The Honorable Almeric L. Christian, Chief Judge of the District Court of the Virgin Islands
The Honorable David V. O'Brien, Judge, District Court
The Honorable Verne A. Hodge, Presiding Judge of the Territorial Court of the Virgin Islands
The Honorable Eileen R. Petersen, Judge
The Honorable Raymond L. Finch, Judge,
The Honorable Henry L. Feuerzeig, Judge
The Honorable Irwin J. Silverlight, Judge
The Honorable Ishmael A. Meyers, Judge
The Honorable Alphonso A. Christian, Sr. Sitting Judge
The Honorable John D. Marsh, Sr. Sitting Judge
The Honorable Kenneth E. Mapp, Senator and Chairman of the Public Safety & Judicial Affairs Committee
Board of Governors, Virgin Islands Bar Association
William L. Blum, Esq., Counsel to the Governor

4/4/83

H.R. ________

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands and Guam.

IN THE HOUSE OF REPRESENTATIVES

April ___, 1983

Mr. De Lugo introduced the following bill; which was referred to the Committee on Interior and Insular Affairs.

A BILL

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands and Guam.

Title I

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Sec. 101 Section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"Section 21. (a) The judicial power of the Virgin Islands shall be vested in such appellate courts and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the district court by section 24(a) and (c) of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts."

Sec. 102. Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat 506; 48 U.S.C. 1612) is amended to read as follows:

"Sec. 22(a) The Virgin Islands shall constitute a judicial district of the United States, consisting of two divisions, the division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of St. Croix shall be held at Christiansted and for the Division of Saint Thomas and Saint John at Charlotte Amalie.

"(b) The president shall appoint, by and with the advice and consent of the Senate, two district judges for the district court of the Virgin Islands who shall hold office during good behavior.

"(c) The salaries of the district judges shall be at the rate prescribed for judges of the United States district courts."

Sec. 103. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 596; 48 U.S.C. 1613) is amended to read as follows:

"Sec. 23(a) There shall be in the judicial district of the Virgin Islands a district court which shall be a court of record to be known as the United States District Court for the district.

"(b) The district court shall consist of the district judges for the district.

"(c) Except as otherwise provided by law or rule of court, the judicial power of the district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone or hold a regular or special session of the court at the same time other sessions are held by other judges.

"(d) The district judge who is senior in continuous service and who otherwise qualifies under Section 136(a) of Title 28, United States Code, shall be the chief judge of the court.

"(e) Sections 137-144, 751-752, and 754-756 of Title 28, United States Code shall apply to the district court and the district judges to the extent relevant and not inconsistent with this act.

"(f) The compensation of the district judges and the administrative expenses of the district court shall be paid from appropriations made for the judiciary of the United States."

Section 104. Section 24 of the Revised Organic Act of the Virgin Islands (68 Stat. 506, 48 U.S.C. 1614) is amended to read as follows:

"Sec. 24(a) The district court shall have the jurisdiction and powers of a United States district court in all cases arising under the Constitution, treaties and laws of the United States.

"(b) In addition to the jurisdiction described in subsection (a) the district court shall have concurrent jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not exclusively vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the district court under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso.

"(c) The district court shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the district court has jurisdiction pursuant to subsections (a) and (b) of this subsection.

"(d) Where appropriate, the provisions of Part II of Title 18 and of Title 28, United States Code, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to Titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom. All offenses shall continue to be prosecuted in the district court by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury."

Sec. 105. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1619) is amended to read:

Sec. 25. (a) The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings.

"(b) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the district court shall have appellate jurisdiction to review the judgments and orders of the courts established by local law to the extent now or hereafter prescribed by the Legislature.

"(c) Final judgments or decrees rendered by the appellate court of the Virgin Islands may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of the Virgin Islands on the ground of its being repugnant to the Constitution, treaties or laws of the United States to the extent made applicable to the Virgin Islands, and the decision

is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States to the extent made applicable to the Virgin Islands, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States to the extent made applicable to the Virgin Islands."

"(d) Upon the establishment of the appellate court provided for in section 21(a) of this Act, all appeals from the decisions of the courts of the Virgin Islands established by local-law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the district court over any appeal then pending in it. The ruling of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court."

Section 106. Section 26 of the Revised Organic Act of the Virgin Islands (68 Stat. 506, 48 U.S.C. 1616) is amended to read:

"Sec. 26(a) The District Court of the Virgin Islands in existence on the effective date of this Act shall continue in existence as the district court for the district of the Virgin Islands under Section 23 of the Revised Organic Act of the Virgin Islands as amended by Section 103 of this Act, with its jurisdiction limited to that conferred upon the district court by Section 24 of the Revised Organic Act of the Virgin Islands as amended by Section 104 of this Act, except that no loss of rights, interruption or cessation of jurisdiction over or prejudice to matters pending in the District Court of the Virgin Islands on the effective date of this Act shall result from its enactment.

"(b) All laws of the United States in force on the effective date of this Act in which reference is made to District Court of the Virgin Islands in other than a historical sense are hereby amended by substituting "United States District Court" for the "District Court of the Virgin Islands" for such designation.

"(c) The judges of the District Court of the Virgin Islands who are in office on the effective date of this Act shall be United States district judges for the District of the Virgin Islands vested with all the rights, powers and duties thereof and shall continue to serve as such during the remainder of their respective terms of office and until their successors are chosen and qualified."

Explanation of the Bill and Section-By-Section Analysis

TITLE I

Section 101

This section amends Section 21 of the Revised Organic Act, 48 U.S.C. §1611, to provide that the judicial power of the Virgin Islands shall be vested in courts created by the laws of the Virgin Islands. Section 21(a) now provides that the judicial power shall be vested in the District Court of the Virgin Islands. This section also authorizes the establishment of a local appellate court by the Legislature of the Virgin Islands and authorizes the Legislature to vest in the local courts jurisdiction over all cases in the Virgin Islands. That jurisdiction, however, would be subject to the exclusive jurisdiction or concurrent jurisdiction of the district court provided for in §24(a) and (c). The procedure in the local courts is to be governed by local law or rules promulgated by the local courts. Subsections (b) and (c) are identical to the sections included in §102 of H.R. 6859, which was introduced in the Second Session of the 97th Congress, except the name of the district court is changed in accordance with proposed §23.

Section 102

This section amends Section 22 of the Revised Organic Act, 48 U.S.C. §1612. The amended section provides that the Virgin Islands shall constitute a federal judicial district with the two existing divisions of St. Croix and of St. Thomas and St. John. The latter provision is taken from Section 25 of the Revised Organic Act and Sec. 107 of H.R. 6859. This subsection also provides that the President shall appoint two district judges for the district for life terms consistent with the terms of all other district court judges and 28 U.S.C. §134(a). The part relating to a judge's term is taken from Section 24(a) of the Revised Organic Act, which now provides for only eight year terms. The provisions that are new are those that state the Virgin Islands shall be a federal district, that the judges shall be designated as district judges, and that increases a judge's term from eight years to life tenure in accordance with the recommendations made at the February 15, 1983 meeting in St. Thomas with members of the House Committee on Interior and Insular Affairs. These changes are necessary to transform the District Court of the Virgin Islands into a purely federal district court. This new Section 22, with the exception of the term for judges, also is similar to that suggested in 1979 by Judge Albert Branson Maris in connection with the work of the Third Constitutional Convention. By Section 106, the District Court of the Virgin Islands is continued as the United States District Court for the district of the Virgin Islands and the present two judges of that court are to serve out the remainder of their terms as district court judges of the district.

Section 103

This section amends Section 23 of the Revised Organic Act, 48 U.S.C. §1613, to provide that there shall be in the judicial district of the Virgin Islands a district court to be known as the United States District Court for the district, which shall consist of the district judges. The power now conferred by Section 24(a) of the Revised Organic Act to assign outside judges to sit temporarily in the District Court is deleted as this would now be covered by 28 U.S.C. §292. The power of each judge to exercise the judicial power of the court independently of the other and of the individual judges to hold sessions simultaneously is spelled out. The present provision of Section 24(b) of the Revised Organic Act determining which judge shall be chief judge is continued. Finally, the present provision of Section 24 of the Revised Organic Act for federal payment of the judges' salaries and the expenses of the district court is included in this amended section. This section also is drawn, in part, from Judge Maris' 1979 proposal.

Section 104

This section amends Section 24 of the Revised Organic Act, 48 U.S.C. §1614. Section 24(a) confers on the district court of the Virgin Islands the full jurisdiction of a district court of the United States and not only federal question jurisdiction. See Chase Manhattan Bank (N.A.) v. South Acres Development Co., 434 U.S. 236 (1978). This is a redraft of the present §22(a) and takes account of the amendment of 28 U.S.C. §1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district court.

Section 24(b) confers on the district court jurisdiction over those local causes over which jurisdiction has not been exclusively vested by local law in the local courts. In contrast to existing laws, the district court will have concurrent jurisdiction with the local courts over the causes exclusively vested in the latter by local law only where specifically provided for by federal law, e.g. in diversity cases or in causes in which a federal question arises. Jurisdiction over petty causes, as defined in that subsection, is basically conferred on the local courts. Again, the district court has jurisdiction over those causes where specifically provided by federal law, e.g., where they involve a federal question within the meaning of 28 US.C. §1331.

Section 24(c) confers on the district court concurrent jurisdiction over offenses of which the local courts have jurisdiction, if those offenses are closely related to offenses over which the district court has jurisdiction. The purpose of this provision is to obviate the need of trying in different courts separate aspects of the same offense or of closely related offenses.

Section 105

This section replaces §25 of the Revised Organic Act, 48 U.S.C. §1615. It provides generally that the relations between the local courts of the Virgin Islands and the federal courts shall be the same as the relations between the state courts and the federal courts.

As in the case of the relationship between federal and state courts, the review of decisions of the appellate court is limited to federal questions to the exclusion of purely local issues, i.e. to appeals involving the Constitution, treaties and laws of the United States or any authority exercised thereunder to the extent made applicable to the Virgin Islands.

Section 25(c) confers jurisdiction on the United States Supreme Court to hear appeals from the appellate court and follows the pattern set when Supreme Court jurisdiction was substituted for that of the Court of Appeals for the First Circuit in the case of Puerto Rico. This appears in 28 U.S.C. §1258 and is precisely the same as the jurisdiction conferred on the Supreme Court by 28 U.S.C. §1257 to review the decisions of the highest courts of the states.

Section 106

This section provides transitional provisions and guides on statutory construction. Subsection 26(a) continues the present "District Court of the Virgin Islands" as the United States District Court for the new federal judicial district of the Virgin Islands. Subsection 26(b) amends the existing law to substitute the new designation of the court for the old one. Subsection 26(c) continues the present judges of the district court in office for the remainder of their terms as United States district judges for the new judicial district.

STATEMENT OF HENRY L. FEUERZEIG
TO THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ON S.1366 and S.1367
October 6, 1983

Mr. Chairman, members of the Subcommittee on Energy Conservation and Supply, I am Henry L. Feuerzeig, a Judge of the Territorial Court of the Virgin Islands, and a former Delegate to the Fourth Constitutional Convention of the United States Virgin Islands. I also had the pleasure during the Fourth Constitutional Convention of serving as the Convention's chairman of the Committee on Judicial Powers and Functions, and in that capacity of appearing before this Committee on several occasions. This statement, however, should not be interpreted in any way as a statement of the Territorial Court of the Virgin Islands or of the Fourth Constitutional Convention of the Virgin Islands.

First, Mr. Chairman, thank you for the opportunity to submit this statement on S.1366 and S.1367. I regret that I cannot appear personally, but my judicial duties prevent me from doing so. As you may recall, though, I had the pleasure during the 97th Congress to address these same issues before your committee as well as the House Committee on Interior and Insular Affairs with respect to S.2729 and H.R. 6859.

I strongly support the purposes and thrust of S.1366 and wish to commend Senator Lowell T. Weicker for introducing it. I still believe that it constitutes a significant step forward in the effort to give the people of the Virgin Islands greater control over their government. Although, as I stated, I represent no organization or branch of the Virgin Islands government, I believe I can safely say that this bill is consistent with the Constitution that was adopted and approved by the Fourth Constitutional Convention of the United States Virgin Islands, and that it is consistent with the Constitution that was adopted by the Third Constitutional Convention. Moreover, with some modification, I think I can safely say it has the strong support of the Virgin Islands Bar Association and a majority of the Territories judges.

One significant aspect of S.1366 is that it would make the District Court of the Virgin Islands a district court in the true sense of the word, giving it jurisdiction equal to that of any other United States District Court. That alone is a long overdue step, and one that I wholeheartedly endorse. More importantly, however, is the fact that S. 1366 provides the means by which a truly local court system can be established in the Virgin Islands by action by the people's elected representatives. As you know, Mr. Chairman, today the local court of the Virgin Islands, for all practical purposes, still is the District Court of the Virgin Islands. Although the district court is manned by two highly qualified individuals, the judges of this court are selected by the President of the United States and confirmed by the United States Senate. This is in contrast to S. 1366, which will give the Legislature the power to place strictly local matters exclusively before locally appointed judges and still preserve diversity and federal question jurisdiction in the district court. In addition, this bill will permit the establishment of a local appellate court when, in the opinion of our elected leaders, we need it and can afford it. Consequently, Mr. Chairman, I believe that this bill is a most significant step forward.

Mr. Chairman, as the sponsor of S.1366, you know that Title II is identical to Title I of S. 2729, which you introduced in the 97th Congress. As you also know, this legislation was prepared by the

Department of Interior and the Department of Justice at your request to reform the judicial system in the Virgin Islands, which request was prompted by the November 3, 1981 defeat of the Fourth Constitution of the Virgin Islands. Since the introduction of S.2729 and H.R. 6859 and hearings on the Senate and House side last year, the Virgin Islands Bar Association convened and voted in favor of modifications in the judicial system in the Virgin Islands. As a result of the Bar Association's position, an ad hoc committee, of which I was a member, was created to draft a substitute bill to the judicial provisions of S.2729 and H.R. 6859. That work was completed in April of this year and sent to our V. I. Delegate to Congress, the Honorable Ron deLugo. A copy of that draft was sent by me to you on May 25, 1983. Since then some minor modifications have been made by the ad hoc committee as a result of recommendations that have been received by the committee. It is my hope, Mr. Chairman, that you will find the substitute bill, a copy of which is appended to my statement with an accompanying analysis, worthy of your support and that you will consider adopting it in place of S.1366.

In brief, the substitute bill has the same purpose as S.1366. The primary differences between S.1366 and the substitute bill drafted by ad hoc committee of the the Virgin Islands Bar Association are as follows:

1. The substitute bill eliminates provisions providing for a grand jury for federal offenses, which provisions are embodied in §201 of S.1366.

2. The substitute bill eliminates the provision that provides for the creation of an interim appellate court. Consequently until an

appellate court is created by the Legislature all appeals would continue to be heard as they are now.

3. The substitute bill makes district court judges Article III judges by providing life tenure and constitutes the Virgin Islands as a judicial district of the United States within which there shall be a court of record to be known as the United States District Court for the district.

4. The substitute bill gives to the Government of the Virgin Islands authority to grant to the local courts exclusive jurisdiction over local matters.

5. The substitute bill spells out in greater detail that appeals may be taken to the United States Supreme Court from the local appellate court that is authorized by the bill.

6. The substitute bill eliminates the 15 year provision for appeals from the local appellate court to the United States Court of Appeals for the Third Circuit.

7. The substitute bill eliminates the provision giving jurisdiction to the district court over all proceedings with respect to the income tax laws applicable to the Virgin Islands, except certain ancillary laws.

Thus, Mr. Chairman, as you can see, the substitute bill carries out the intent and purposes of S.1366 with certain modifications. Briefly, I would like to state the reason for each of the above differences between the substitute bill and S.1366, and hopefully answer any questions you may have as to why the changes are being recommended.

1. Grand Jury

As noted the substitute bill eliminates §201 of Title II of S.1366, which section authorizes the prosecution of violations of federal laws and certain closely related local offenses by indictment or by information. This section is designed to overcome United States v. Christian, 660 F.2d 892 (3rd Cir. 1981), which held that existing law precludes the impanelling of a federal grand jury in the Virgin Islands to investigate the violation of federal laws. Although I recognize that this as a uniquely federal matter, I personally believe that the grand jury system is on the wane in the United States and have serious reservations as to how useful it would be in the Virgin Islands. Moreover, at a Bar Association meeting conducted earlier this year, those present unanimously endorsed exemption of the Virgin Islands from the requirement of indictment by grand jury.

2. Interim Appellate Court

S.1366 in Title II, §205 adds a new §23A to the Revised Organic Act of 1954 to provide for the establishment of an interim appellate court. The substitute bill eliminates any provision for an interim appellate court so that the appeal process in the Virgin Islands would remain as it is until a local appellate court was created by the Legislature.

I still believe that prior to the establishment of a locally created appellate court there should be a three judge interim court to hear appeals from the Territorial Court. Thus I differ with the Bar Association on this issue. I do not believe, though, that this difference is significant enough to prevent enactment of legislation that would provide for the creation of a local appellate court and for making the District Court of the Virgin Islands a truly federal court in every sense of the word.

Section 205 of S.1366, of course, is consistent with the proposed Constitution of the Fourth Constitutional Convention, which also provided for an interim appellate court similar to the appellate division of the district court created by the proposed section. It reflects the view of a majority of Virgin Islands residents that the present system of reviewing decisions of local courts by a single judge is inappropriate. The change also is in accord with the recommendations of the Committee on Judicial Powers and Functions of the Fourth Constitutional Convention as well as recommendations of the American Bar Association.

A few judges in the Virgin Islands as well as a significant number of Virgin Islands lawyers believe the status quo is better than what would result by creation of an interim appellate court. Some are of the belief that creation of an interim appellate court will result in too great of a work load for the present district court judges, because district court judges will have to consider and participate in all appeals from the Territorial Court. There are some who oppose the interim appellate court as proposed because a Territorial Court judge will be placed on the interim appellate court and this would require that judge to sit in judgment of his or her own peers.

As I stated, I still believe the pros outweigh the cons, a position shared by the Honorable Juan Luis, Governor of the Virgin Islands. However, in view of the strong sentiment expressed by the Bar Association and some other judges I am prepared to accede to their wishes on this point, and, therefore, endorse the substitute bill as drafted without the interim appellate court.

3. Article III Status for District Court Judges

S. 1366, in §206, has the salutory feature of increasing the term of district court judges of the Virgin Islands from eight to ten years. It still, however, does not put the district court judges on a par with federal judges throughout the country. Accordingly, the Bar Association substitute bill attempts to remedy that defect by providing for life tenure for district court judges of the Virgin Islands, thus making them Article III judges in every sense of the word. This is consistent with a recommendation that was first made in February of this year at a meeting in St. Thomas with members of the House Committee on Interior and Insular Affairs, and it is believed that the changes are necessary to make the District Court of the Virgin Islands a truly federal district court.

4. Jurisdiction over Local Matters

Another distinction between the substitute bill and S.1366 is that the substitute bill gives to the local government the authority to grant to the local court exclusive jurisdiction over local matters. Thus, the language contained in §24(b) of the Bar Association bill is more desirable than §203 of S.1366 and the proposed §22(b) language. The substitute bill differs from S.1366 on page 19, line 7 in that between the word "not" and "vested" the word "exclusively" is inserted, and on line 6 between the words "all" and "causes" the word "other" is inserted. Thus, I propose adoption of the substitute bill's language. Thus, the provision relating to jurisdiction of the district court, with respect to local matters, should read:

> (b) In addition to the jurisdiction described in subsection (a) the district court shall have concurrent jurisdiction in all other causes in the Virgin Islands the jurisdiction over which is not exclusively vested by local law in the local courts of the Virgin Islands . . .

The effect of this change is to confer on the district court jurisdiction only over those local causes which have not been exclusively vested by local law in the local courts. In contrast to existing law, the district court will have concurrent jurisdiction with the local courts over causes exclusively vested in the latter by local law only where it is specifically provided for by federal law, e.g., in diversity cases or in causes in which a federal question arises.

5. Appeals to the United States Supreme Court

The substitute bill in §105 and S.1366 in §204 provide for appeals from the locally created appellate court to be taken to the United States Supreme Court. The substitute bill, however, in §105, which would amend §25(c) of the Revised Organic Act, confers jurisdiction on the United States Supreme Court much more explicitly. This language was suggested by Albert Branson Maris, Senior United States Circuit Judge for the Third Circuit, because of his fear that the proposed §23 of S.1366 was too inferential and that the grant of jurisdiction was too backhanded. The language suggested by Judge Maris and which is included in §105 of the substitute bill follows a pattern set when Supreme Court jurisdiction was substituted for that of the Court of Appeals for the First Circuit in the case of Puerto Rico. This appears in 28 U.S.C. §1258 and is precisely the same as the jurisdiction conferred on the Supreme Court by 28 U.S.C. §1257 to review the decisions of the highest courts of the states. Therefore, using it as a precedent seems most compelling.

6. Appeals to the Third Circuit

Under the substitute bill, upon creation of a local appellate court, appeals from decisions of that court would be taken to the United States Supreme Court. Under S.1366, however, even upon creation of a local appellate court, appeals would continue to be taken from that court to the Third Circuit Court of Appeals for a period of 15 years. This, of course, is consistent with the work of the Fourth Constitutional Convention and recognizes that some believe a transitional period is needed before appeals are removed from the Third Circuit.

Such a procedure, however, fails to recognize the long experience the Virgin Islands already has had of having appeals taken to the Third Circuit from the District Court of strictly local matters. More importantly, it fails to put the local appellate court on the same level as the courts in the 50 states, Puerto Rico and the District of Columbia. Once the Legislature decides to create a local appeals court, there really can be no legitimate reason for continuing appeals from that three judge tribunal to the Third Circuit. As long as we have a one judge appellate court, there is a basis for retaining the Third Circuit, but once that system is eliminated, which would be accomplished under the substitute bill as well as S.1366, there no longer will be a need to retain the Third Circuit to hear appeals of strictly local matters.

7. Jurisdiction over Income Tax Laws

The final substantive difference between the substitute bill and S.1366, Mr. Chairman, relates to language included in §203(a) to amend §22(a) of the Revised Organic Act which, in lines 22, 23, 24, and 25 on page 18, and lines 1,2, and 3 on page 19, gives the district court exclusive jurisdiction over all proceedings with respect to the income tax laws applicable to the Virgin Islands, except certain ancillary laws. This language in not included in the Bar Association bill. As you know, Governor Juan Luis again has strongly recommended deletion of this language, which was included in the Justice Department draft, but not in H.R. 6859 which was introduced by Virgin Islands Delegate Ron deLugo in the second session of the 97th Congress. The language of §203(a) in S.1366 first was proposed in 1981 by the Department of the Interior in its proposal to implement the Constitution proposed by the Fourth Constitutional Convention of the Virgin Islands. At that time, Mr. Chairman, you may recall that when you introduced S.1674 you deleted that very language. I believe it should be deleted again as it does not appropriately belong in this legislation, whether you are dealing with the substitute bill or S.1366.

This provision reflects the thinking of the Department of Justice, as voiced by Herman Marcuse of the Office of Legal Counsel in his statement of October 21, 1981 to this committee with respect to S.1674. In his statement, Mr. Marcuse said:

> At present the jurisdiction of the federal courts over cases involving the income tax laws applicable to the Virgin Islands appears to be based only on the Virgin Islands Code. Dudley v. Commissioner of Internal Revenue, 258 F.2d 182, 188 (3d Cir. 1958). Hence it could be withdrawn by the Legislature of the Virgin Islands.

I cannot concur in Mr. Marcuse's analysis. As you know, pursuant to §28(a) of the Revised Organic Act: "All persons whose permanent residence is in the Virgin Islands . . . shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the Treasury of the Virgin Islands." Therefore, if an individual fails to meet his Virgin Islands income tax obligations, he also has failed to satisfy his United States income tax obligations. As such, this would constitute a violation of federal law, and under the proposed §22(a) of S.1366 and under the substitute bill the District Court of the Virgin Islands would be able to hear the matter because it would "have jurisdiction of a district court of the United States."

In addition, the Virgin Islands income tax law, although a "mirror" of the federal law, is considered a local tax. Therefore, continued local administration of the tax law is appropriate and should be maintained at the present level or be increased, rather than cut back as proposed in S.1366. The Attorney General of the Virgin Islands presently prosecutes income tax cases within the jurisdictional limits of the Territorial Court, but does not have the authority to conduct criminal prosecutions in the District Court without permission from the United States Attorney. Consequently, this proposed change could hinder criminal tax law enforcement in the Virgin Islands. Finally, if there is to be any change in income tax laws that apply to the Virgin Islands, it should not be attempted on a piecemeal basis in an act to amend the judicial system. Rather, such changes, if they are to be enacted, should be by way of a comprehensive bill dealing with tax matters. In that respect, Governor Juan Luis repeatedly has offered to discuss the outlines of such a measure with the Department of Interior, the Department of Justice, and the Department of Treasury upon invitation. I am certain his Administration continues to adhere to that offer.

This, then Mr. Chairman, sums up the basic differences between the substitute bill, which has the endorsement of the Bar Association, and S.1366 as proposed. There are some other differences in language that are merely technical in nature and are changes designed to implement an Article III court in the Virgin Islands. These changes are delineated in the analysis accompanying the substitute bill that is attached to this statement.

If for some reason, however, the committee does not believe it can modify S.1366 and adopt the substitute bill and create an Article III district court in the Virgin Islands, then I still would endorse the efforts of the Committee to move forward with S.1366. In that respect, I will take Title II section by section insofar as it relates to the Virgin Islands and give some brief comments where appropriate. I hope that this will aid the committee in its review of S.1366.

Section 101 to amend Section 3 of the Revised Organic Act

As stated above, this section would authorize the prosecution of violations of federal laws and certain closely related local offenses by indictment or by information and for the reasons stated above I recommend deletion of this section.

Section 202 to amend Section 21 of the Revised Organic Act

Proposed subsection 21(a) provides for the establishment by local law of a local appellate court and retention of the district court, and for the reasons already stated I fully endorse this subsection. A minor point, I see no need for the "establishment by Congress" clause since there can be no question that the District Court of the Virgin Islands, as it is now constituted is an Article IV court and a creation of Congress. Carty v. Beech Aircraft Corp., 679 F.2d 1051 (3d Cir. 1982).

I also endorse proposed subsections 21(b) and (c), and particularly subsection (c), which will give the local court, as opposed to the district court, the power to promulgate rules governing the practice and procedure of the local courts, which is long overdue.

Section 203 to amend Section 22 of the Revised Organic Act

Proposed subsection 22(a) would confer on the District Court of the Virgin Islands, effective April 1, 1984, the jurisdiction of a bankruptcy court of the United States. I do not favor this provision and suggest that it be amended. The ever-increasing bankruptcy caseload would be better served if the Revised Organic Act was amended to provide for a bankruptcy judge for the Virgin Islands. Depending upon the caseload, the salary of the bankruptcy judge could be fixed at something less than a bankruptcy judge in other districts, but still be considerably more than the $4,500 annual salary now paid. As the work increases, this salary could, of course, be adjusted. Thus the position, in effect, would be part-time. Under no circumstances should the district of the Virgin Islands again be placed in the position of having to depend upon visits by a bankruptcy judge from the District of Puerto Rico. We tried that system once and it was an absolute failure. It did not serve the people of the Virgin Islands, the practicing members of the Bar, or the visiting bankruptcy judge. I thus urge deletion of the language of §22(a) that reads: "and effective April 1, 1984, that of a bankruptcy court of the United States."

As I stated above, I also strongly oppose the last sentence of the proposed Section 22(a), which provides:

> The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved except the laws relating to income tax enacted by the legislature of the Virgin Islands.

For the reasons already stated I hope this language will be deleted.

Proposed subsections 22(b) and (c) appear to be consistent with the overall intent of S.1366 and I endorse them with one slight modification, which I discussed earlier. These proposed subsections, in conjunction with the amendment of Section 21 of the Revised Organic Act, would permit the Virgin Islands by local law to vest exclusive jurisdiction over strictly local matters in the local court system. This is an approach that I also wholeheartedly endorse. I am concerned, however, that the divestiture of jurisdiction from the

District Court and placement of jurisdiction in the Virgin Islands' local courts be done when the Territory is ready to do so and when the Territory is in a position to bear the cost that such a change will bring. Accordingly, as is in the substitute bill, I propose inserting in proposed section 22(b) the word "exclusively" before the word "vested" and the word "other" between "all" and "causes." This change would make the proposed section read:

> In addition to the jurisdiction described in subsection(a) the District Court of the Virgin Islands shall have original jurisdiction in all other causes in the Virgin Islands, the jurisdiction over which is not exclusively vested by local law in the courts of the Virgin Islands . . .

Section 204 to amend Section 23 of the Revised Organic Act

Consistent with my earlier comments, I recommend modification of the proposed §23. That section, as now drafted, provides that for fifteen years after the establishment of a local appellate court the Third Circuit Court of Appeals will continue to have jurisdiction of appeals from all final decisions involving the constitution, treaties, and laws of the United States. Therefore, I suggest changing the semicolon after the word "proceedings" to a period and deleting the balance of the language of the first sentence of proposed §23, and inserting as a new subsection (b) the language contained in §105 and the proposed §25(a) in the substitute bill.

Section 205 to add a new Section 23A of the Revised Organic Act

Again, I favor this section as constituting a most important step toward greater self-government for the Virgin Islands and a recognition of the views of many Virgin Islands residents that our present appellate system is inappropriate. As I pointed out above, though, this section is opposed by the Bar Association.

Section 206 to amend Section 24 of the Revised Organic Act

If life tenure and Article III status is not given to the district court judges, then I endorse this section as written. It still is a significant change because this would increase the term of district court judges from eight to ten years. This change was strongly recommended by the Fourth Constitutional Convention and solves a very significant problem with respect to retirement benefits of district court judges.

As I know you are aware, Mr. Chairman, under existing law district court judges of the Virgin Islands now are appointed for terms of eight years and, therefore, pursuant to 28 U.S.C. §373 do not become eligible for retirement benefits until they have served ten years. This has had the effect of creating a severe hardship on judges in the Virgin Islands. As you may know, we recently had a situation where the late Warren H.Young was appointed to and served an eight year term. Near the end of his term, it was announced that he was not going to be reappointed. As a result, he was not eligible for retirement benefits. It was an unfortunate circumstance and one that this section will rectify.

So that those judges who currently are sitting on the district court of the Virgin Islands also will be eligible for retirement benefits, it is my hope that the committee will consider adopting a provision that will make the 10-year term provision applicable to sitting district court judges in the Virgin Islands. Although neither the substitute bill or S.1366 has specific language to accomplish this, I would suggest language similar to the following to accomplish that end:

> (b) The provisions of §206(a) of this Act shall be applicable to all judges of the District Court of the Virgin Islands holding office on the effective date of this Act so that all such judges shall be deemed to have been appointed for a term of 10 years, retroactive to the date of appointment of each such judge.

This Mr. Chairman concludes my comments on Title II of S.1366 insofar as it relates to the Virgin Islands.

I also have reviewed S.1376 and do not see where any of the proposed changes would not be salutory.

Finally, Mr. Chairman, I propose consideration of one other piece of legislation to provide for senior judges in the Virgin Islands, and that is a bill I have drafted to amend §373 of Title 28 of the United States Code relating to judges in the territories and possessions. I propose enactment of the following as a new title to S.1366 or as a separate piece of legislation:

Sec. 373 of Title 28 of the United States Code is amended to read as follows:

> "Any judge of the United States District Court for the district of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder

of his life to receive the salary he received when he relinquished office, and shall be known and designated as a senior judge pursuant to section 294(b) and may continue to perform such judicial duties as he is willing and able to undertake when designated and assigned as provided in subsections (c) and (d) of section 294."

This section would amend Title 28 of the United States Code, §373 relating to judges in territories and possessions by making §294 applicable to such judges. The section is exactly as now written except for the addition of the last clause after ". . . relinquished office." The effect of this change is to constitute the district court judges of the Canal Zone, Guam and the Virgin Islands, who have attained the age of 70 and have served at least 10 years, or who have attained the age of 65 and have served at least 15 years, as senior judges. This would mean that the district court judges of these territories, if willing and able to undertake the duties, could be designated and assigned by the chief judge or judicial council of the circuit to perform such judicial duties within the circuit as such judge would be willing and able to undertake. At the present time district court judges in the Canal Zone, Guam and the Virgin Islands cannot be utilized as senior judges when they reach retirement age. As a result, the territories lose the benefit of having a judge with many years of experience continue to perform duties that he or she is willing to perform even though he or she receives the same retirement pay. This amendment would mean that district court judges of the territories, upon reaching retirement age and after having an appropriate amount of service, could continue to serve and assist the courts of the territories in performance of judicial duties, which would appreciably help in decreasing the backlog of cases.

With those comments, Mr. Chairman, I again wish to thank you and the members of the Committee for the opportunity to submit this statement. Attached you will find the substitute bill drafted by the ad hoc committee of the Virgin Islands Bar Association along with a section-by-section analysis. I regret not being able to appear personally. I stand ready at any time to assist you or the committee in connection with this legislation and I would be more than happy to answer any questions you may have.

BILL DRAFTED BY VIRGIN ISLANDS BAR ASSOCIATION AD HOC COMMITTEE TO AMEND OR REPEAL CERTAIN PROVISIONS OF THE ORGANIC ACTS WITH ACCOMPANYING SECTION BY SECTION ANALYSIS

S.________

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands.

IN THE SENATE OF THE UNITED STATES
October ___, 1983

Mr. introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands.

Title I

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Sec. 101 Section 21 of the Revised Organic Act 4 of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"Section 21. (a) The judicial power of the Virgin Islands shall be vested in such appellate courts and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the district court by section 24 of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts."

Sec. 102. Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat 506; 48 U.S.C. 1612) is amended to read as follows:

"Sec. 22(a) The Virgin Islands shall constitute a judicial district of the United States, consisting of two divisions, the division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of St. Croix shall be held at Christiansted and for the Division of Saint Thomas and Saint John at Charlotte Amalie.

"(b) The president shall appoint, by and with the advice and consent of the Senate, two district judges for the district court of the Virgin Islands who shall hold office during good behavior.

"(c) The salaries of the district judges shall be at the rate prescribed for judges of the United States district courts."

Sec. 103. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 596; 48 U.S.C. 1613) is amended to read as follows:

"Sec. 23(a) There shall be in the judicial district of the Virgin Islands a district court which shall be a court of record to be known as the United States District Court for the district.

"(b) The district court shall consist of the district judges for the district.

"(c) Except as otherwise provided by law or rule of court, the judicial power of the district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone or hold a regular or special session of the court at the same time other sessions are held by other judges.

"(d) The district judge who is senior in continuous service and who otherwise qualifies under Section 136(a) of Title 28, United States Code, shall be the chief judge of the court.

"(e) Sections 137-144, 751-752, and 754-756 of Title 28, United States Code shall apply to the district court and the district judges to the extent relevant and not inconsistent with this act.

"(f) The compensation of the district judges and the administrative expenses of the district court shall be paid from appropriations made for the judiciary of the United States."

Section 104. Section 24 of the Revised Organic Act of the Virgin Islands (68 Stat. 506, 48 U.S.C. 1614) is amended to read as follows:

"Sec. 24(a) The district court shall have the jurisdiction and powers of a United States district court.

"(b) In addition to the jurisdiction described in subsection (a) the district court shall have concurrent jurisdiction in all other causes in the Virgin Islands the jurisdiction over which is not exclusively vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the district court under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso.

"(c) The district court shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the district court has jurisdiction pursuant to subsections (a) and (b) of this subsection.

"(d) Where appropriate, the provisions of Part II of Title 18 and of Title 28, United States Code, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to Titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom. All offenses shall continue to be prosecuted in the district court by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury."

Sec. 105. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1619) is amended to read:

Sec. 25. (a) The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings.

"(b) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the district court shall have appellate jurisdiction to review the judgments and orders of the courts established by local law to the extent now or hereafter prescribed by the Legislature.

"(c) Final judgments or decrees rendered by the appellate court of the Virgin Islands may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of the Virgin Islands on the ground of its being repugnant to the Constitution, treaties or laws of the United States to the extent made applicable to the Virgin Islands, and the decision

is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Virgin Islands is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States to the extent made applicable to the Virgin Islands, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States to the extent made applicable to the Virgin Islands."

"(d) Upon the establishment of the appellate court provided for in section 21(a) of this Act, all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the district court over any appeal then pending in it. The ruling of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court."

Section 106. Section 26 of the Revised Organic Act of the Virgin Islands (68 Stat. 506, 48 U.S.C. 1616) is amended to read:

"Sec. 26(a) The District Court of the Virgin Islands in existence on the effective date of this Act shall continue in existence as the district court for the district of the Virgin Islands under Section 23 of the Revised Organic Act of the Virgin Islands as amended by Section 103 of this Act, with its jurisdiction limited to that conferred upon the district court by Section 24 of the Revised Organic Act of the Virgin Islands as amended by Section 104 of this Act, except that no loss of rights, interruption or cessation of jurisdiction over or prejudice to matters pending in the District Court of the Virgin Islands on the effective date of this Act shall result from its enactment.

"(b) All laws of the United States in force on the effective date of this Act in which reference is made to District Court of the Virgin Islands in other than a historical sense are hereby amended by substituting "United States District Court for the District Court of the Virgin Islands" for the "District Court of the Virgin Islands" for such designation.

"(c) The judges of the District Court of the Virgin Islands who are in office on the effective date of this Act shall be United States district judges for the District of the Virgin Islands vested with all the rights, powers and duties thereof and shall continue to serve as such during the remainder of their respective terms of office and until their successors are chosen and qualified."

Explanation of the Bill and Section-By-Section Analysis

TITLE I

Section 101

This section amends Section 21 of the Revised Organic Act, 48 U.S.C. §1611, to provide that the judicial power of the Virgin Islands shall be vested in courts created by the laws of the Virgin Islands. Section 21(a) now provides that the judicial power shall be vested in the District Court of the Virgin Islands. This section also authorizes the establishment of a local appellate court by the Legislature of the Virgin Islands and authorizes the Legislature to vest in the local courts jurisdiction over all cases in the Virgin Islands. That jurisdiction, however, would be subject to the exclusive jurisdiction or concurrent jurisdiction of the district court provided for in §24. The procedure in the local courts is to be governed by local law or rules promulgated by the local courts. Subsections (b) and (c) are virtually identical to the sections included in §202 of S.1366 and §102 of H.R. 6859, which was introduced in the Second Session of the 97th Congress. The name of the district court is changed in accordance with proposed §23 and reference to what is subsections 22(a) and 22(c) in S.1366 is broadened to include all of section 22, which confers concurrent jurisdiction on the district court.

Section 102

This section amends Section 22 of the Revised Organic Act, 48 U.S.C. §1612. The amended section provides that the Virgin Islands shall constitute a federal judicial district with the two existing divisions of St. Croix and of St. Thomas and St. John. The latter provision is taken from Section 25 of the Revised Organic Act, Section 207 of S.1366 and Sec. 107 of H.R. 6859. This subsection also provides that the President shall appoint two district judges for the district for life terms consistent with the terms of all other district court judges and 28 U.S.C. §134(a). The part relating to a judge's term is taken from Section 24(a) of the Revised Organic Act, which now provides for only eight year terms. The provisions that are new are those that state the Virgin Islands shall be a federal district, that the judges shall be designated as district judges, and that increase a judge's term from eight years to life tenure in accordance with the recommendations made at the February 15, 1983 meeting in St. Thomas with members of the House Committee on Interior and Insular Affairs. These changes are necessary to transform the District Court of the Virgin Islands into a purely federal district court. This new Section 22, with the exception of the term for judges, also is similar to that suggested in 1979 by Judge Albert Branson Maris in connection with the work of the Third Constitutional Convention. By Section 106, the District Court of the Virgin Islands is continued as the United States District Court for the district of the Virgin Islands and the present two judges of that court are to serve out the remainder of their terms as district court judges of the district.

Section 103

This section amends Section 23 of the Revised Organic Act, 48 U.S.C. §1613, to provide that there shall be in the judicial district of the Virgin Islands a district court to be known as the United States District Court for the district, which shall consist of the district judges. The power now conferred by Section 24(a) of the Revised Organic Act to assign outside judges to sit temporarily in the District Court is deleted as this would now be covered by 28 U.S.C. §292. The power of each judge to exercise the judicial power of the court independently of the other and of the individual judges to hold sessions simultaneously is spelled out. The present provision of Section 24(b) of the Revised Organic Act determining which judge shall be chief judge is continued. Finally, the present provision of Section 24 of the Revised Organic Act for federal payment of the judges' salaries and the expenses of the district court is included in this amended section. This section also is drawn, in part, from Judge Maris' 1979 proposal.

Section 104

This section amends Section 24 of the Revised Organic Act, 48 U.S.C. §1614. Section 24(a) confers on the district court of the Virgin Islands the full jurisdiction of a district court of the United States and not only federal question jurisdiction. See Chase Manhattan Bank (N.A.) South Acres Development Co., 434 U.S. 236 (1978). This is a redraft of the present §22(a) and takes account of the amendment of 28 U.S.C. §1331, which has eliminated the jurisdictional amount in federal question jurisdiction of the district court. Subsection (a) is a modification of §203(a) of S.1366 and the proposed Section 22(a).

Section 24(b) confers on the district court jurisdiction over those local causes over which jurisdiction has not been exclusively vested by local law in the local courts. In contrast to existing laws, the district court will have concurrent jurisdiction with the local courts over the causes exclusively vested in the latter by local law only where specifically provided for by federal law, e.g. in diversity cases or in causes in which a federal question arises. Jurisdiction over petty causes, as defined in that subsection, is basically conferred on the local courts. Again, the district court has jurisdiction over those causes where specifically provided by federal law, e.g. where they involve a federal question within the meaning of 28 U.S.C. §1331. This subsection is similar to the proposed subsection 25(b) contained in §203(a) of S.1366.

Section 24(c) confers on the district court concurrent jurisdiction over offenses of which the local courts have jurisdiction, if those offenses are closely related to offenses over which the district court has jurisdiction. The purpose of this provision is to obviate the need of trying in different courts separate aspects of the same offense or of closely related offenses. This section is virtually identical to subsection 22(c) in §203(a) of §1366.

Section 105

This section replaces §25 of the Revised Organic Act, 48 U.S.C. §1615. It provides generally that the relations between the local courts of the Virgin Islands and the federal courts shall be the same as the relations between the state courts and the federal courts.

As in the case of the relationship between federal and state courts, the review of decisions of the appellate court is limited to federal questions to the exclusion of purely local issues, i.e., to appeals involving the Constitution, treaties and laws of the United States or any authority exercised thereunder to the extent made applicable to the Virgin Islands. This subsection is drawn from §204 of S.1366 and the proposed Sec. 23, but eliminates any provision for appeals from a local appeals court to the United States Court of Appeals for the Third Circuit.

Subsection (b) continues appellate jurisdiction in the district court prior to the establishment of the appellate court authorized by section 21(a). It thus eliminates the interim appellate court provided for by §205 of S.1366 and the proposed section 23A.

Section 25(c) confers jurisdiction on the United States Supreme Court to hear appeals from the appellate court and follows the pattern set when Supreme Court jurisdiction was substituted for that of the Court of Appeals for the First Circuit in the case of Puerto Rico. This appears in 28 U.S.C. §1258 and is precisely the same as the jurisdiction conferred on the Supreme Court by 28 U.S.C. §1257 to review the decisions of the highest courts of the states. This subsection has the same effect as §204 of S.1366 and the proposed section 23, but is much more explicit in conferring jurisdiction on the U.S. Supreme Court. This change has been strongly recommended by Judge Maris.

Section 106

This section provides transitional provisions and guides on statutory construction. Subsection 26(a) continues the present "District Court of the Virgin Islands" as the United States District Court for the new federal judicial district of the Virgin Islands. Subsection 26(b) amends the existing law to substitute the new designation of the court for the old one. Subsection 26(c) continues the present judges of the district court in office for the remainder of their terms as United States district judges for the new judicial district.